
CHAPTER 53 OF SUBTITLE III OF TITLE 49, U.S.C.

TITLE 49—TRANSPORTATION

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CHAPTER 53—MASS TRANSPORTATION

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§ 5301. Policies, findings, and purposes

(a) DEVELOPMENT OF TRANSPORTATION SYSTEMS.—It is in the interest of the United States to encourage and promote the development of transportation systems that embrace various modes of transportation and efficiently maximize mobility of individuals and goods in and through urbanized areas and minimize transportation-related fuel consumption and air pollution.

(b) GENERAL FINDINGS.—Congress finds that—

(1) more than 70 percent of the population of the United States urban mass transportation systems needed for economical and desirable urban development with the cooperation of public and private mass transportation companies;

(3) to assist States and local governments and their authorities in financing areawide urban mass transportation systems that are to be operated by public or private mass transportation companies as decided by local needs;

(4) to provide financial assistance to State and local governments and their authorities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals; and

(5) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its urban mass transportation requirements.

§ 5302. Definitions

(a) IN GENERAL.—In this chapter, the following definitions apply:

(1) CAPITAL PROJECT.—The term “capital project” means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in mass transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating a bus;

- (C) remanufacturing a bus;
- (D) overhauling rail rolling stock;
- (E) preventive maintenance;

(F) leasing equipment or a facility for use in mass transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction;

(G) a mass transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a mass transportation project and is related physically or functionally to that mass transportation project, or establishes new or enhanced coordination between mass transportation and other transportation, and provides a fair share of revenue for mass transportation that will be used for mass transportation—

(i) including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(ii) excluding construction of a commercial revenue-producing facility or a part of a public facility not related to mass transportation; designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

(12) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(13) STATE.—The term “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(14) TRANSIT.—The term “transit” means mass transportation.

(15) TRANSIT ENHANCEMENT.—The term “transit enhancement” means, with respect to any project or an area to be served by a project, projects that are designed to enhance mass transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are—

(A) historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities);

(B) bus shelters;

(C) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;

(D) public art;

(E) pedestrian access and walkways;

(F) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles;

(G) transit connections to parks within the recipient's transit service area;

(H) signage; and

(I) enhanced access for persons with disabilities to mass transportation.

(16) URBAN AREA.—The term “urban area” means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local mass transportation system to serve individuals in the locality.

(17) URBANIZED AREA.—The term “urbanized area” means an area—

(A) encompassing at least an urbanized area within a State that the Secretary of Commerce designates; and

(B) designated as an urbanized area within boundaries fixed by State and local officials and approved by the Secretary.

(b) AUTHORITY TO MODIFY “HANDICAPPED INDIVIDUAL”.—The Secretary may by regulation modify the definition of the term “handicapped individual” in subsection (a)(5) as it applies to section 5307(d)(1)(D).

§ 5303. Metropolitan planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To carry out section 5301(a), metropolitan planning organizations designated under subsection (c), in cooperation with the States and mass transportation operators, shall develop transportation plans and programs for urbanized areas of the State.

(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—The metropolitan transportation planning process for a metropolitan area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

(E) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

(c) DESIGNATING METROPOLITAN PLANNING ORGANIZATIONS.—

(1) To carry out the planning process required by this section and sections 5304–5306 of this title, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000—

(A) by agreement of the chief executive officer of a State and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities, as defined by the Bureau of the Census); or

(B) under procedures established by State or local law.

(2) Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area when designated or redesignated under this subsection shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan area (including all transportation authorities included in the organization on June 1, 1991), and appropriate State officials.

(3) More than one metropolitan planning organization may be designated within an existing metropolitan planning area only if the chief executive officer of the State and the existing metropolitan organization determine that the size and complexity of the existing metropolitan planning area make designation of more than one organization appropriate.

(4) A designation is effective until—

(A) the organization is redesignated under paragraph (5) of this subsection; or

(B) revoked—

(i) by agreement of the chief executive officer and units of general local government representing at least 75 percent of the affected population; or

(ii) as otherwise provided by State or local procedures.

(5)(A) The chief executive officer and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities, as defined by the Bureau of the Census) may redesignate by agreement a metropolitan planning organization when appropriate to carry out this section and sections 5304–5306 of this title.

(B) A metropolitan planning organization shall be redesignated on request of one or more units of general local government representing at least 25 percent of the affected population (including the central city or cities, as defined by the Bureau of the Census) in an urbanized area with a population of more than 5,000,000, but less than 10,000,000 or that is an extreme nonattainment area for ozone or carbon monoxide (as defined in the Clean Air Act (42 U.S.C. 7401 et seq.)).

(C) A metropolitan planning organization shall be redesignated using procedures established to carry out this paragraph.

(D) Designations of metropolitan planning organizations, whether made under this section or under any other provision of law, shall remain in effect until redesignation under this paragraph.

(6) This subsection does not affect the authority, under State law in effect on December 18, 1991, of a public authority with multimodal transportation responsibilities—

(A) to develop plans and programs for a metropolitan planning organization to adopt; and

(B) to develop long-range capital plans, coordinate mass transportation services and projects, and carry out other activities under State law.

(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—To carry out this section, the metropolitan planning organization and the chief executive officer shall decide by agreement on the boundaries of a metropolitan planning area.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) EXISTING METROPOLITAN PLANNING AREAS IN NON-ATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the chief executive officer of the State and any affected metropolitan planning organizations, in the manner described in subsection (c)(5).

(4) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of this paragraph as a nonattainment area

for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (c)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

(e) COORDINATION.—(1) The Secretary of Transportation shall establish requirements the Secretary considers appropriate to encourage chief executive officers and metropolitan planning organizations with responsibility for part of a multi-State metropolitan area to provide coordinated transportation planning for the entire area.

(2) Congress consents to at least 2 States making an agreement or compact, not in conflict with a law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(3) If more than one metropolitan planning organization has authority in a metropolitan area or an area designated a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each organization shall consult with the other organizations designated for the area and the State to coordinate plans and projects required by this section and sections 5304–5306 of this title.

(4) The Secretary shall encourage each metropolitan planning organization to coordinate, to the maximum extent practicable, the design and delivery of transportation services within the metropolitan planning area that are provided—

(A) by recipients of assistance under this chapter; and

(B) by governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Governmental assistance from a source other than the Department of Transportation to provide non-emergency transportation services.

(5) COORDINATION.—If a project is located within the boundaries of more than 1 metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.

(6) LAKE TAHOE REGION.—

(A) DEFINITION.—In this paragraph, the term “Lake Tahoe region” has the meaning given the term “region” in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake

Tahoe region a transportation planning process for the region; and

(ii) coordinate the transportation planning process with the planning process required of State and local governments under this chapter and sections 134 and 135 of title 23.

(C) INTERSTATE COMPACT.—

(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this chapter and under title 23, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

(f) DEVELOPING LONG-RANGE TRANSPORTATION PLANS.—(1) Each metropolitan planning organization shall prepare and update periodically, according to a schedule the Secretary of Transportation decides is appropriate, a long-range plan¹ for its metropolitan area under the requirements of this section. The plan shall be in the form the Secretary considers appropriate and at least shall—

¹Section 3004(e)(6) of Public Law 105-179 (112 Stat. 345) struck “long-range plans” and inserted “long-range transportation plans” each place it appears. There was no amendment made to strike “long-range plan” and insert long-range transportation plan” each place it appears.

(A) identify transportation facilities (including major roadways, mass transportation, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, emphasizing transportation facilities that serve important national, regional, and metropolitan transportation functions;

(B) include a financial plan that—

(i) demonstrates how the long-range plan can be carried out;

(ii) indicates resources from public and private sources reasonably expected to be made available to carry out the plan; and

(iii) recommends any additional financing strategies for needed projects and programs;

(C) identify transportation strategies necessary—

(i) to ensure preservation, including requirements for management, operation, modernization, and rehabilitation, of the existing and future transportation system; and

(ii) to use existing transportation facilities most efficiently to relieve congestion, to efficiently serve the mobility needs of people and goods, and to enhance access within the metropolitan planning area;

(D) indicate appropriate proposed transportation enhancement activities; and

(E) the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range plan if reasonable additional resources beyond those identified in the financial plan were available, except that, for the purpose of developing the long-range plan, the metropolitan planning organization and the State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(2) When formulating a long-range transportation plan, the metropolitan planning organization shall consider the factors described in subsection (b) of this section and any State or local goals developed within the cooperative metropolitan planning process as they relate to a 20-year forecast period and to other forecast periods as determined by the participants in the planning process.

(3) In a metropolitan area that is in a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of the long-range plan with the development of the transportation control measures of the State Implementation Plan required by the Act.

(4) Before approving a long-range plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of mass transportation authority employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the plan in a way the Secretary of Transportation considers appropriate.

(5) A long-range plan shall be—

(A) published or otherwise made readily available for public review; and

(B) submitted for information purposes to the chief executive officer of the State at the time and in the way the Secretary of Transportation establishes.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (1)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (1)(B).

(g) GRANTS.—Under criteria the Secretary of Transportation establishes, the Secretary may make contracts for, and grants to, States, local governmental authorities, and authorities of the States and governmental authorities, or may make agreements with other departments, agencies, and instrumentalities of the Government, to plan, engineer, design, and evaluate a mass transportation project and for other technical studies, including—

(1) studies related to management, operations, capital requirements, and economic feasibility;

(2) evaluating previously financed projects; and

(3) other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

(h) BALANCED AND COMPREHENSIVE PLANNING.—(1) To the extent practicable, the Secretary of Transportation shall ensure that amounts made available under subsection (c) or (h)(1) of section 5338 of this title to carry out this section and sections 5304 and 5305 of this title are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(2)(A) The Secretary of Transportation shall apportion 80 percent of the amount made available under subsection (c) or (h)(1) of section 5338 of this title to States in a ratio equal to the population in urbanized areas in each State divided by the total population in urbanized areas in all States, as shown by the latest available decennial census. A State may not receive less than .5 percent of the amount apportioned under this subparagraph.

(B) Amounts apportioned to a State under subparagraph (A) of this paragraph shall be allocated to metropolitan planning organizations in the State designated under this section under a formula—

(i) the State develops in cooperation with the metropolitan planning organizations;

(ii) the Secretary of Transportation approves; and

(iii) that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

(C) A State shall make amounts available promptly to eligible metropolitan planning organizations according to procedures the Secretary of Transportation approves.

(3)(A) The Secretary of Transportation shall apportion 20 percent of the amount made available under subsection (c) or (h)(1) of section 5338 of this title to States to supplement allocations made

under paragraph (2)(B) of this subsection for metropolitan planning organizations.

(B) Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under this section and sections 5304–5306 of this title in those areas.

(4) To the maximum extent practicable, the Secretary of Transportation shall ensure that no metropolitan planning organization is allocated less than the amount it received by administrative formula under this section in the fiscal year that ended September 30, 1991. To carry out this subsection, the Secretary may make a proportionate reduction in other amounts made available to carry out subsection (c) or (h)(1) of section 5338 of this title.

(5) Amounts available for an activity under this subsection are for 80 percent of the cost of the activity unless the Secretary of Transportation decides it is in the interests of the Government not to require a State or local match.

(6) An amount apportioned under this subsection—

(A) remains available for 3 years after the fiscal year in which the amount is apportioned, and

(B) that is unobligated at the end of the 3-year period shall be reapportioned among the States for the next fiscal year.

§ 5304. Transportation improvement program

(a) DEVELOPMENT AND UPDATE.—

(1) IN GENERAL.—In cooperation with the State and affected mass transportation operators, a metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area. In developing the program, the metropolitan planning organization, in cooperation with the chief executive officer of the State and any affected mass transportation operator, shall provide citizens, affected public agencies, representatives of transportation authority employees, other affected employee representatives, freight shippers, providers of freight transportation services, other affected employee representatives, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the organization and the chief executive officer of the State.

(2) FUNDING ESTIMATE.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(b) CONTENTS.—A transportation improvement program for a metropolitan area shall include—

(1) a priority list of projects and parts of projects to be carried out in each 3-year period after the program is adopted; and

(2) a financial plan that—

(A) demonstrates how the program can be carried out;

- (B) indicates resources from public and private sources that reasonably are expected to be made available to carry out the plan;
- (C) identifies innovative financing techniques to finance projects, programs, and strategies; and¹
- (D) may include, for illustrative purposes, additional projects that would be included in the approved transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available.
- (c) PROJECT SELECTION.—(1) Except as otherwise provided in section 5305(d)(1) and in addition to the transportation improvement program development required under subsection (b), the selection of federally funded projects for implementation in metropolitan areas shall be carried out, from the approved transportation improvement program—
- (A) by—
- (i) in the case of projects under title 23, the State; and
- (ii) in the case of projects under this chapter, the designated transit funding recipients; and
- (B) in cooperation with the metropolitan planning organization.
- (2) A transportation improvement program for a metropolitan area shall include—
- (A) projects within the area that are proposed for financing under this chapter and title 23 and that are consistent with the long-range plan developed under section 5303(f) of this title; and
- (B) a project or an identified phase of a project only if full financing reasonably can be anticipated to be available for the project in the period estimated for completion.
- (3) Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.
- (4) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—
- (A) IN GENERAL.—Notwithstanding subsection (b)(2)(D), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(D).
- (B) ACTION BY SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the plan under subsection (b)(2) for inclusion in an approved transportation improvement plan.
- (5) PUBLICATION.—(A) A transportation improvement program involving Government participation shall be published or otherwise

¹Section 3005(d)(2)(B) of the Transportation Equity Act for the 21st Century (P.L. 105–178) amended this subparagraph by striking “strategies which may include” and inserting “strategies; and” and added a new subparagraph (D). A comma probably should have been included between the words “strategies” and “which” in the matter to be struck. The amendment was executed to reflect the probable intent of Congress.

made readily available by the metropolitan planning organization for public review.

(B) An annual listing of projects for which Government funds have been obligated in the preceding year shall be published or otherwise made available by the metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the transportation improvement program.

(6) Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program. All other projects funded under chapter 2 of title 23 shall be grouped in 1 line item or identified individually in the transportation improvement program.

(d) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice and an opportunity to comment on the proposed program.

(e) REGULATORY PROCEEDING.—Not later than June 18, 1992, the Secretary of Transportation shall begin a regulatory proceeding to conform review requirements for mass transportation projects under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to comparable requirements under that Act applicable to highway projects. This section and sections 5303, 5305, and 5306 of this title do not affect the applicability of the Act to mass transportation or highway projects. A mass transportation project that has an approved draft Environmental Impact Statement is exempt from complying with requirements under the Act applicable to highway projects.

§ 5305. Transportation management areas

(a) DESIGNATION.—The Secretary of Transportation shall designate as a transportation management area—

(1) each urbanized area with a population of more than 200,000; and

(2) any other area, if requested by the chief executive officer and the metropolitan planning organization designated for the area.

(b) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs in a transportation management area shall be based on a continuing and comprehensive transportation planning process the metropolitan planning organization carries out in cooperation with the State and affected mass transportation operators.

(c) CONGESTION MANAGEMENT SYSTEM.—The transportation planning process under sections 5303, 5304, and 5306 of this title in a transportation management area shall include a congestion management system providing for effective management, through travel demand reduction and operational management strategies, of new and existing transportation facilities eligible for financing under this chapter and title 23.

(d) PROJECT SELECTION.—(1)(A) All federally funded projects carried out within the boundaries of a transportation management area under title 23 (excluding projects carried out on the National

Highway System and projects carried out under the bridge and interstate maintenance program) or under this chapter shall be selected from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

(B) Projects carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the interstate maintenance program shall be selected from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

(2)(A) A selection under this subsection must comply with the transportation improvement program for the area.

(B) A selection under paragraph (1)(A) of this subsection must comply with priorities established in the program.

(e) CERTIFICATION.—(1) At least once every 3 years, the Secretary shall ensure and certify that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States. The Secretary may make the certification only if the organization is complying with section 134 of title 23 and other applicable requirements of laws of the United States and the organization and chief executive officer have approved a transportation improvement program for the area.

(2)(A) If a metropolitan planning process is not certified, the Secretary may withhold not more than 20 percent of the apportioned funds attributable to the transportation management area under this chapter and title 23.

(B) Any apportionments withheld under subparagraph (A) shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary.

(3) The Secretary may not withhold certification based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under section 5306(a) of this title for deciding the feasibility of private enterprise participation.

(4) In making certification determinations under this subsection, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(f) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—Government amounts may be made available for a mass transportation project resulting in a significant increase in carrying capacity for single occupant vehicles in a transportation management area classified as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) only if the project is part of an approved congestion management system.

(g) AREAS NOT DESIGNATED TRANSPORTATION MANAGEMENT AREAS.—(1) The Secretary may provide for the development of abbreviated metropolitan transportation plans and programs the Secretary decides are appropriate to carry out this section and sections 5303, 5304, and 5306 of this title for metropolitan areas not designated transportation management areas under this section.

The Secretary shall consider the complexity of transportation problems in those areas, including transportation-related air quality problems.

(2) The Secretary may not provide an abbreviated plan or program for a metropolitan area in a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

(h) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and programs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the plans and programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and programs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

§ 5306. Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations

(a) PRIVATE ENTERPRISE PARTICIPATION.—A plan or program required by section 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible the participation of private enterprise. If equipment or a facility already being used in an urban area is to be acquired under this chapter, the program shall provide that it be improved so that it will better serve the transportation needs of the area.

(b) RELATIONSHIP TO OTHER LIMITATIONS.—Sections 5303–5305 of this title do not authorize—

(1) a metropolitan planning organization to impose a legal requirement on a transportation facility, provider, or project not eligible under this chapter or title 23; and

(2) intervention in the management of a transportation authority.

§ 5307. Urbanized area formula grants

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ASSOCIATED CAPITAL MAINTENANCE ITEMS.—The term “associated capital maintenance items” means equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.

(2) DESIGNATED RECIPIENT.—The term “designated recipient” means—

(A) a person designated, consistent with the planning process under sections 5303–5306 of this title, by the chief executive officer of a State, responsible local officials, and publicly owned operators of mass transportation to receive and apportion amounts under section 5336 of this title that are attributable to transportation management areas established under section 5305(a) of this title; or

(B) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing mass transportation.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants under this section for capital projects and to finance the planning and improvement costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment. The Secretary may also make grants under this section to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of less than 200,000. The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000.

(2) In a transportation management area designated under section 5305(a) of this title, amounts that cannot be used to pay operating expenses under this section also are available for a highway project if—

(A) that use is approved, in writing, by the metropolitan planning organization under section 5303 of this title after appropriate notice and an opportunity for comment and appeal is provided to affected mass transportation providers;

(B) the Secretary decides the amounts are not needed for investment required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(C)¹ the metropolitan planning organization in approving the use under subparagraph (A) determines that the local transit needs are being addressed.

(3) A project for the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used, is a capital project for an associated capital maintenance item under this section.

(c) PUBLIC PARTICIPATION REQUIREMENTS.—Each recipient of a grant shall—

(1) make available to the public information on amounts available to the recipient under this section and the program of projects the recipient proposes to undertake;

(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

(3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

¹ So in law.

(4) provide an opportunity for a public hearing in which to obtain the views of citizens on the proposed program of projects;

(5) ensure that the proposed program of projects provides for the coordination of mass transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

(6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

(7) make the final program of projects available to the public.

(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a chief executive officer of a State under this section)—

(A) has or will have the legal, financial, and technical capacity to carry out the program;

(B) has or will have satisfactory continuing control over the use of equipment and facilities;

(C) will maintain equipment and facilities;

(D) will ensure that elderly and handicapped individuals, or an individual presenting a medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq., 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section not more than 50 percent of the peak hour fare;

(E) in carrying out a procurement under this section—

(i) will use competitive procurement (as defined or approved by the Secretary);

(ii) will not use a procurement that uses exclusionary or discriminatory specifications; and

(iii) will comply with applicable Buy America laws in carrying out a procurement;

(F) has complied with subsection (c) of this section;

(G) has available and will provide the required amounts as provided by subsection (e) of this section;

(H) will comply with sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title;

(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation; and

(J)(i) will expend for each fiscal year for mass transportation security projects, including increased lighting in or adjacent to a mass transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in

or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned mass transportation system, at least one percent of the amount the recipient receives for each fiscal year under section 5336 of this title; or

(ii) has decided that the expenditure for security projects is not necessary; and

(2) the Secretary accepts the certification.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant of the Government for a capital project (including associated capital maintenance items) under this section is for 80 percent of the net project cost of the project. A recipient may provide additional local matching amounts. A grant for operating expenses may not be more than 50 percent of the net project cost of the project. The remainder of the net project cost shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation (excluding revenues derived from the sale of advertising and concessions that are more than the amount of those revenues in the fiscal year that ended September 30, 1985). Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(f) STATEWIDE OPERATING ASSISTANCE.—(1) A State authority that is a designated recipient and providing mass transportation in at least 2 urbanized areas may apply for operating assistance in an amount not more than the amount for all urbanized areas in which it provides transportation.

(2) When approving an application under paragraph (1) of this subsection, the Secretary may not reduce the amount of operating assistance approved for another State or a local transportation authority within the affected urbanized areas.

(g) UNDERTAKING PROJECTS IN ADVANCE.—(1) When a recipient obligates all amounts apportioned to it under section 5336 of this title and then carries out a part of a project described in this section (except a project for operating expenses) without amounts of the Government and according to all applicable procedures and requirements (except to the extent the procedures and requirements limit a State to carrying out a project with amounts of the Government previously apportioned to it), the Secretary may pay to the recipient the Government's share of the cost of carrying out that part when additional amounts are apportioned to the recipient under section 5336 if—

(A) the recipient applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out that part, the Secretary approves the plans and specifications for the part in the same way as for other projects under this section.

(2) The Secretary may approve an application under paragraph (1) of this subsection only if an authorization for this section is in effect for the fiscal year to which the application applies. The Secretary may not approve an application if the payment will be more than—

(A) the recipient's expected apportionment under section 5336 of this title if the total amount authorized to be appro-

apportioned for the fiscal year to carry out this section is appropriated; less

(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

(3) The cost of carrying out that part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest allowed under this paragraph may not be more than the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(4) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (3) of this subsection.

(h) STREAMLINED ADMINISTRATIVE PROCEDURES.—The Secretary shall prescribe streamlined administrative procedures for complying with the certification requirement under subsection (d)(1)(B) and (C) of this section for track and signal equipment used in existing operations.

(i) REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

(i) the activities proposed under subsection (d) of this section in a timely and effective way and can continue to do so; and

(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

(B) An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

(2) At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (d) of this section and the planning process required under sections 5303–5306 of this title. To the extent practicable, the Secretary shall coordinate such reviews with any related State or local reviews.

(3) The Secretary may take appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

(j) REPORTS.—A recipient (including a person receiving amounts from a chief executive officer of a State under this section) shall submit annually to the Secretary a report on the revenues the recipient derives from the sale of advertising and concessions.

(k) TRANSIT ENHANCEMENT ACTIVITIES.—

(1) IN GENERAL.—One percent of the funds apportioned to urbanized areas with a population of at least 200,000 under

section 5336 for a fiscal year shall be made available for transit enhancement activities in accordance with section 5302(a)(15).

(2) PERIOD OF AVAILABILITY.—Funds apportioned under paragraph (1) shall be available for obligation for 3 years following the fiscal year in which the funds are apportioned. Funds that are not obligated at the end of such period shall be reapportioned under the urbanized area formula program of section 5336.

(3) REPORT.—A recipient of funds apportioned under paragraph (1) shall submit, as part of the recipient's annual certification to the Secretary, a report listing the projects carried out during the preceding fiscal year with those funds.

(1) PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Secretary to approve its procurement system. The Secretary shall approve the system for use for procurements financed under section 5336 of this title if, after consulting with the Administrator for Federal Procurement Policy, the Secretary decides the system provides for competitive procurement. Approval of a system under this subsection does not relieve a recipient of the duty to certify under subsection (d)(1)(E) of this section.

(m) OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used in ferryboat operations financed under section 5336 of this title that is part of a State-operated ferry system may be operated occasionally outside the urbanized area in which service is provided to accommodate periodic maintenance if existing ferry service is not reduced significantly by operating outside the area.

(n) RELATIONSHIP TO OTHER LAWS.—(1) Section 1001 of title 18 applies to a certificate or submission under this section. The Secretary may end a grant under this section and seek reimbursement, directly or by offsetting amounts available under section 5336 of this title, when a false or fraudulent statement or related act within the meaning of section 1001 is made in connection with a certification or submission.

(2) Sections 5302, 5318, 5319, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

§ 5308. Clean fuels formula grant program

(a) DEFINITIONS.—In this section—

(1) the term “clean fuel vehicle” means a vehicle that—

(A) is powered by—

- (i) compressed natural gas;
- (ii) liquefied natural gas;
- (iii) biodiesel fuels;
- (iv) batteries;
- (v) alcohol-based fuels;
- (vi) hybrid electric;
- (vii) fuel cell;
- (viii) clean diesel, to the extent allowed under this

section; or

- (ix) other low or zero emissions technology; and

- (B) the Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions;
- (2) the term “designated recipient” has the same meaning as in section 5307(a)(2); and
- (3) the term “eligible project”—
- (A) means a project for—
 - (i) purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;
 - (ii) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment;
 - (iii) improving existing mass transportation facilities to accommodate clean fuel buses;
 - (iv) repowering pre-1993 engines with clean fuel technology that meets the current urban bus emission standards; or
 - (v) retrofitting or rebuilding pre-1993 engines if before half life to rebuild; and
 - (B) in the discretion of the Secretary, may include projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology vehicles that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.
- (b) **AUTHORITY.**—The Secretary shall make grants in accordance with this section to designated recipients to finance eligible projects.
- (c) **APPLICATION.**—
- (1) **IN GENERAL.**—Not later than January 1 of each year, any designated recipient seeking to apply for a grant under this section for an eligible project shall submit an application to the Secretary, in such form and in accordance with such requirements as the Secretary shall establish by regulation.
 - (2) **CERTIFICATION REQUIRED.**—An application submitted under paragraph (1) shall contain a certification by the applicant that the grantee will operate vehicles purchased with a grant under this section only with clean fuels.
- (d) **APPORTIONMENT OF FUNDS.**—
- (1) **FORMULA.**—Not later than February 1 of each year, the Secretary shall apportion amounts made available to carry out this section to designated recipients submitting applications under subsection (c), of which—
 - (A) two-thirds shall be apportioned to designated recipients with eligible projects in urban areas with a population of at least 1,000,000, of which—
 - (i) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—
 - (I) the number of vehicles in the bus fleet of the eligible project of the designated recipient, weighted by severity of nonattainment for the area in which the eligible project is located, as provided in paragraph (2); and

(II) the total number of vehicles in the bus fleets of all eligible projects in areas with a population of at least 1,000,000 funded under this section, weighted by severity of nonattainment for all areas in which those eligible projects are located, as provided in paragraph (2); and

(ii) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

(I) the number of bus passenger miles (as that term is defined in section 5336(c)) of the eligible project of the designated recipient, weighted by severity of nonattainment of the area in which the eligible project is located, as provided in paragraph (2); and

(II) the total number of bus passenger miles of all eligible projects in areas with a population of at least 1,000,000 funded under this section, weighted by severity of nonattainment of all areas in which those eligible projects are located, as provided in paragraph (2); and

(B) one-third shall be apportioned to designated recipients with eligible projects in urban areas with a population of less than 1,000,000, of which—

(i) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

(I) the number of vehicles in the bus fleet of the eligible project of the designated recipient, weighted by severity of nonattainment for the area in which the eligible project is located, as provided in paragraph (2); and

(II) the total number of vehicles in the bus fleets of all eligible projects in areas with a population of less than 1,000,000 funded under this section, weighted by severity of nonattainment for all areas in which those eligible projects are located, as provided in paragraph (2); and

(ii) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

(I) the number of bus passenger miles (as that term is defined in section 5336(c)) of the eligible project of the designated recipient, weighted by severity of nonattainment of the area in which among other designated recipients in accordance with paragraph (1).

(e) ADDITIONAL REQUIREMENTS.—

(1) LIMITATION ON USES.—Not less than 5 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section shall be available for any eligible projects for which an application is received from a designated recipient, for—

(A) the purchase or construction of hybrid electric or battery-powered buses; or

(B) facilities specifically designed to service those buses.

(2) CLEAN DIESEL BUSES.—Not more than 35 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(3) BUS RETROFITTING AND REPLACEMENT.—Not more than 5 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund retrofitting or replacement of the engines of buses that do not meet the clean air standards of the Environmental Protection Agency, as in effect on the date on which the application for such retrofitting or replacement is submitted under subsection (c)(1).

(f) AVAILABILITY OF FUNDS.—Any amount made available or appropriated under this section—

(1) shall remain available to a project for 1 year after the fiscal year for which the amount is made available or appropriated; and

(2) that remains unobligated at the end of the period described in paragraph (1), shall be added to the amount made available in the following fiscal year.

§ 5309. Capital investment grants and loans

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants and loans under this section to assist State and local governmental authorities in financing—

(A) capital projects for new fixed guideway systems, and extensions to existing fixed guideway systems, including the acquisition of real property, the initial acquisition of rolling stock for the systems, alternatives analysis related to the development of the systems, and the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

(B) capital projects, including property and improvements (except public highways other than fixed guideway facilities), needed for an efficient and coordinated mass transportation system;

(C) the capital costs of coordinating mass transportation with other transportation;

(D) the introduction of new technology, through innovative and improved products, into mass transportation;

(E) capital projects to modernize existing fixed guideway systems;

(F) capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities;

(G) mass transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

(H) the development of corridors to support fixed guideway systems, including protecting rights of way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased mass transportation usage in the corridor.

(2) The Secretary of Transportation shall require that all grants and loans under this subsection be subject to all terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section.

(b) LOANS FOR REAL PROPERTY INTERESTS.—(1) The Secretary of Transportation may make loans under this section to State and local governmental authorities to acquire interests in real property for use on urban mass transportation systems as rights of way, station sites, and related purposes, including reconstruction, renovation, the net cost of property management, and relocation payments made under section 5324(a) of this title.

(2) The Secretary of Transportation may make a loan under paragraph (1) of this subsection for an approved project only after finding that the property reasonably is expected to be required for a mass transportation system and that it will be used for that system within a reasonable time.

(3) An applicant for a loan under this subsection shall provide a copy of the application to the planning agency for the community affected by the project at the same time the application is submitted to the Secretary of Transportation. If the planning agency submits comments to the Secretary not later than 30 days after the application is submitted, or, if the agency requests more time within those 30 days, within a period the Secretary establishes, the Secretary shall consider those comments before taking final action on the application.

(4) A loan agreement under this subsection shall provide that a capital project on the property will be started not later than 10 years after the fiscal year in which the agreement is made. If an interest in property acquired under this subsection is not used for the purpose for which it was acquired, an appraisal of the current value of the property or interest shall be made when a decision is made about the use. The decision shall be made within the 10-year period. Two-thirds of the increase in value shall be paid to the Secretary of Transportation for deposit in the Treasury as miscellaneous receipts.

(5) A loan under this subsection must be repaid not later than 10 years after the date of the loan agreement or on the date a grant agreement for a capital project on the property is made, whichever is earlier. Payments made to repay the loan shall be deposited in the Treasury as miscellaneous receipts.

(c) [Reserved.]

(d) PROJECT AS PART OF APPROVED PROGRAM OF PROJECTS.—Except as provided in subsections (b)(2) and (e) of this section, the Secretary of Transportation may approve a grant or loan for a project under this section only after finding that the project is part

of the approved program of projects required under sections 5303–5306 of this title and that an applicant—

(1) has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of equipment or facilities, and the capability to maintain the equipment or facilities; and

(2) will maintain the equipment or facilities.

(e) CRITERIA FOR GRANTS AND LOANS FOR FIXED GUIDEWAY SYSTEMS.—

(1) IN GENERAL.—The Secretary may approve a grant or loan under this section for a capital project for a new fixed guideway system or extension of an existing fixed guideway system only if the Secretary determines that the proposed project is—

(A) based on the results of an alternatives analysis and preliminary engineering;

(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies; and

(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension.

(2) ALTERNATIVES ANALYSIS AND PRELIMINARY ENGINEERING.—In evaluating a project under paragraph (1)(A), the Secretary shall analyze and consider the results of the alternatives analysis and preliminary engineering for the project.

(3) PROJECT JUSTIFICATION.—In evaluating a project under paragraph (1)(B), the Secretary shall—

(A) consider the direct and indirect costs of relevant alternatives;

(B) consider factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed, and recognize reductions in local infrastructure costs achieved through compact land use development;

(C) identify and consider mass transportation supportive existing land use policies and future patterns, and the cost of suburban sprawl;

(D) consider the degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;

(E) consider population density and current transit ridership in the corridor;

(F) consider the technical capability of the grant recipient to construct the project;

(G) adjust the project justification to reflect differences in local land, construction, and operating costs; and

(H) consider other factors that the Secretary determines appropriate to carry out this chapter.

(4) LOCAL FINANCIAL COMMITMENT.—

(A) EVALUATION OF PROJECT.—In evaluating a project under paragraph (1)(C), the Secretary shall require that—

(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

(iii) local resources are available to operate the overall proposed mass transportation system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing mass transportation services to operate the proposed project.

(B) CONSIDERATIONS.—In assessing the stability, reliability, and availability of proposed sources of local financing under subparagraph (A), the Secretary shall consider—

(i) existing grant commitments;

(ii) the degree to which financing sources are dedicated to the purposes proposed;

(iii) any debt obligation that exists or is proposed by the recipient for the proposed project or other mass transportation purpose; and

(iv) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project.

(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Transit Act of 1998, the Secretary shall issue regulations on the manner in which the Secretary will evaluate and rate the projects based on the results of alternatives analysis, project justification, and the degree of local financial commitment, as required under this subsection.

(6) PROJECT EVALUATION AND RATING.—A proposed project may advance from alternatives analysis to preliminary engineering, and may advance from preliminary engineering to final design and construction, only if the Secretary finds that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements. In making such findings, the Secretary shall evaluate and rate the project as “highly recommended”, “recommended”, or “not recommended”, based on the results of alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established under the regulations issued under paragraph (5).

(7) FULL FUNDING GRANT AGREEMENT.—A project financed under this subsection shall be carried out through a full funding grant agreement. The Secretary shall enter into a full funding grant agreement based on the evaluations and ratings required under this subsection. The Secretary shall not enter into a full funding grant agreement for a project unless that project is authorized for final design and construction.

(8) LIMITATIONS ON APPLICABILITY.—

(A) PROJECTS WITH A SECTION 5309 FEDERAL SHARE OF LESS THAN \$25,000,000.—A project for a new fixed guideway system or extension of an existing fixed guideway system is not subject to the requirements of this subsection, and the simultaneous evaluation of similar projects in at least 2 corridors in a metropolitan area may not be limited, if the assistance provided under this section with respect to the project is less than \$25,000,000.

(B) PROJECTS IN NONATTAINMENT AREAS.—The simultaneous evaluation of projects in at least 2 corridors in a metropolitan area may not be limited and the Secretary shall make decisions under this subsection with expedited procedures that will promote carrying out an approved State Implementation Plan in a timely way if a project is—

- (i) located in a nonattainment area;
- (ii) a transportation control measure (as defined by the Clean Air Act (42 U.S.C. 7401 et seq.)); and
- (iii) required to carry out the State Implementation Plan.

(C) PROJECTS FINANCED WITH HIGHWAY FUNDS.—This subsection does not apply to a part of a project financed completely with amounts made available from the Highway Trust Fund (other than the Mass Transit Account).

(D) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—This subsection does not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Transit Act of 1998.

(f) [Reserved.]

(g) LETTERS OF INTENT, FULL FUNDING¹ GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—(1)(A) The Secretary of Transportation may issue a letter of intent to an applicant announcing an intention to obligate, for a project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. The amount shall be sufficient to complete at least an operable segment when a letter is issued for a fixed guideway project.

(B) At least 60 days before issuing a letter under subparagraph (A) of this paragraph or entering into a full funding grant agreement, the Secretary of Transportation shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

(C) The issuance of a letter is deemed not to be an obligation under sections 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative commitment.

¹Section 3009(f)(1) of the Transportation Equity Act for the 21st Century (P.L. 105–178) amended this subsection heading by striking “FINANCING” and inserting “FUNDING”. The amendment was executed to reflect the intent of Congress.

(D) An obligation or administrative commitment may be made only when amounts are appropriated.

(2)(A) The Secretary of Transportation may make a full funding grant agreement with an applicant. The agreement shall—

(i) establish the terms of participation by the United States Government in a project under this section;

(ii) establish the maximum amount of Government financial assistance for the project;

(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

(iv) make timely and efficient management of the project easier according to the law of the United States.

(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

(3)(A) The Secretary of Transportation may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

(i) a full funding grant agreement for the project will be made; and

(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary of Transportation decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown

reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

(4) The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements may be not more than the greater of the amount authorized under section 5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(h)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems, less an amount the Secretary of Transportation reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements may be not more than a limitation specified in law.

(h) GOVERNMENT'S SHARE OF NET PROJECT COST.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary of Transportation shall estimate the net project cost. A grant for the project is for 80 percent of the net project cost, unless the grant recipient requests a lower grant percentage. The remainder shall be provided in cash from a source other than amounts of the Government. Transit system amounts that make up the remainder must be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. The remainder for a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(i) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b) of this section, a loan, including a renewal or extension of the loan, may be made, and a security or obligation may be bought, only if it has a maturity date of not more than 40 years. Interest on a loan may not be less than—

(1) a rate the Secretary of the Treasury establishes, considering the current average yield on outstanding marketable obligations of the Government that have remaining periods of maturity comparable to the average maturity of the loan, adjusted to the nearest .125 percent; plus

(2) an allowance the Secretary of Transportation considers adequate to cover administrative costs and probable losses.

(j) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital project may forgive repaying the loan and interest in place of a cash grant for the amount forgiven. The amount is part of the grant and part of the contribution of the Government to the cost of the project.

(k) **LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.**—The Secretary of Transportation may not make a loan under this section for a project for which a grant (except a relocation payment grant) is made under this section. However, the Secretary may make a project grant even though real property for the project has been or will be acquired through a loan under subsection (b) of this section.

(l) **FISCAL CAPACITY CONSIDERATIONS.**—If the Secretary of Transportation gives priority consideration to financing projects that include more than the non-Government share required under subsection (h) of this section, the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(m) **ALLOCATING AMOUNTS.**—

(1) **IN GENERAL.**—Of the amounts made available by or appropriated under section 5338(b) for grants and loans under this section for each of fiscal years 1998 through 2003—

(A) 40 percent shall be available for fixed guideway modernization;

(B) 40 percent shall be available for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems; and

(C) 20 percent shall be available to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities.

(2) **NEW FIXED GUIDEWAY GRANTS.**—

(A) **LIMITATION ON AMOUNTS AVAILABLE FOR ACTIVITIES OTHER THAN FINAL DESIGN AND CONSTRUCTION.**—Not more than 8 percent of the amounts made available in each fiscal year by paragraph (1)(B) shall be available for activities other than final design and construction.

(B) **FUNDING FOR FERRY BOAT SYSTEMS.**—

(i) **AMOUNTS UNDER (1)(B).**—Of the amounts made available under paragraph (1)(B), \$10,400,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

(ii) **AMOUNTS UNDER 5338(h)(5).**—Of the amounts appropriated under section 5338(h)(5), \$3,600,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

(3) **BUS AND BUS FACILITY GRANTS.**—

(A) **CONSIDERATION.**—In making grants under paragraph (1)(C), the Secretary shall consider the age of buses, bus fleets, related equipment, and bus-related facilities.

(B) **FUNDING FOR BUS TESTING FACILITY.**—Of the amounts made available under paragraph (1)(C),

\$3,000,000 shall be available in each of fiscal years 1998 through 2003 to carry out section 5318.

(C) FUNDING FOR CLEAN FUELS.—Of the amounts made available under paragraph (1)(C), \$50,000,000 shall be available in each of fiscal years 1999 through 2003 to carry out section 5308.

(D) OTHER THAN URBANIZED AREAS.—Of amounts made available by paragraph (1)(C), not less than 5.5 percent shall be available in each fiscal year for other than urbanized areas.

(4) ELIGIBILITY FOR ASSISTANCE FOR MULTIPLE PROJECTS.—A person applying for or receiving assistance for a project described in subparagraph (A), (B), or (C) of paragraph (1) may receive assistance for a project described in any other of such subparagraphs.

(n) UNDERTAKING PROJECTS IN ADVANCE.—(1) The Secretary of Transportation may pay the Government's share of the net project cost to a State or local governmental authority that carries out any part of a project described in this section or a substitute transit project described in section 103(e)(4) of title 23 without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(A) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section or section 103(e)(4) of title 23.

(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(3) The Secretary of Transportation shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

(o) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

(o)¹ REPORTS.—

(1) FUNDING LEVELS AND ALLOCATIONS OF FUNDS FOR FIXED GUIDEWAY SYSTEMS.—

(A) ANNUAL REPORT.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking,

¹ So in law. See section 3009(i) and (j) of Public Law 105–178 (112 Stat. 356–357).

Housing, and Urban Affairs of the Senate a report that includes a proposal on the allocation of amounts to be made available to finance grants and loans for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems among applicants for those amounts.

(B) RECOMMENDATIONS ON FUNDING.—The annual report under this paragraph shall include evaluations and ratings, as required under subsection (e), for each project that is authorized or has received funds under this section since the date of enactment of the Federal Transit Act of 1998 or October 1 of the preceding fiscal year, whichever date is earlier. The report shall also include recommendations of projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years and for the next 10 fiscal years based on information currently available to the Secretary.

(2) SUPPLEMENTAL REPORT ON NEW STARTS.—The Secretary shall submit a report to Congress on the 31st day of August of each year that describes the Secretary's evaluation and rating of each project that has completed alternatives analysis or preliminary engineering since the date of the last report. The report shall include all relevant information that supports the evaluation and rating of each project, including a summary of each project's financial plan.

(3) ANNUAL GAO REVIEW.—The General Accounting Office shall—

(A) conduct an annual review of—

(i) the processes and procedures for evaluating and rating projects and recommending projects; and

(ii) the Secretary's implementation of such processes and procedures; and

(B) shall report to Congress on the results of such review by April 30 of each year.

(p) PROJECT DEFINED.—In this section, the term "project" means, with respect to a new fixed guideway system or extension to an existing fixed guideway system, a minimum operable segment of the project.

§ 5310. Formula grants and loans for special needs of elderly individuals and individuals with disabilities

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans to—help reduce urban transportation needs, improve mass transportation service, or help mass transportation service meet the total urban transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.

(b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may make grants to nonprofit institutions of higher learning—

(A) to conduct competent research and investigations into the theoretical or practical problems of urban transportation; and

(B) to train individuals to conduct further research or obtain employment in an organization that plans, builds, operates, or manages an urban transportation system.

(2) Research and investigations under this subsection include—

(A) the design and use of urban mass transportation systems and urban roads and highways;

(B) the interrelationship between various modes of urban and interurban transportation;

(C) the role of transportation planning in overall urban planning;

(D) public preferences in transportation;

(E) the economic allocation of transportation resources; and

(F) the legal, financial, engineering, and esthetic aspects of urban transportation.

(3) When making a grant under this subsection, the appropriate Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to urban transportation problems.

(c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METHODS.—(1) The Secretary of Transportation may make grants to States, local governmental authorities, and operators of mass transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the mass transportation field.

(2) The Secretary of Transportation may make grants to State and local governmental authorities for projects that will use innovative techniques and methods in managing and providing mass transportation.

(3) A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the mass transportation industry. The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient mass transportation operation. A grant for a fellowship may not be more than the lesser of \$24,000 or 75 percent of—

(A) tuition and other charges to the fellowship recipient;

(B) additional costs incurred by the training institution and billed to the grant recipient; and

(C) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

(d) JOINT PARTNERSHIP PROGRAM FOR DEPLOYMENT OF INNOVATION.—

(1) DEFINITION OF CONSORTIUM.—In this subsection, the term “consortium”—

(A) means 1 or more public or private organizations located in the United States that provide mass transportation service to the public and 1 or more businesses, including small- and medium-sized businesses, incorporated

in a State, offering goods or services or willing to offer goods and services to mass transportation operators; and

(B) may include, as additional members, public or private research organizations located in the United States, or State or local governmental authorities.

(2) GENERAL AUTHORITY.—The Secretary may, under terms and conditions that the Secretary prescribes, enter into grants, contracts, cooperative agreements, and other agreements with consortia selected in accordance with paragraph (4), to promote the early deployment of innovation in mass transportation services, management, operational practices, or technology that has broad applicability. This paragraph shall be carried out in consultation with the transit industry by competitively selected consortia that will share costs, risks, and rewards of early deployment of innovation.

(3) CONSORTIUM CONTRIBUTION.—A consortium assisted under this subsection shall provide not less than 50 percent of the costs of any joint partnership project. Any business, organization, person, or governmental body may contribute funds to a joint partnership project.

(4) NOTICE REQUIREMENT.—The Secretary shall periodically give public notice of the technical areas for which joint partnerships are solicited, required qualifications of consortia desiring to participate, the method of selection and evaluation criteria to be used in selecting participating consortia and projects, and the process by which innovation projects described in paragraph (1) will be awarded.

(5) USE OF REVENUES.—The Secretary shall accept, to the maximum extent practicable, a portion of the revenues resulting from sales of an innovation project funded under this section. Such revenues shall be accounted for separately within the Mass Transit Account of the Highway Trust Fund and shall be available to the Secretary for activities under this subsection. Annual revenues that are less than \$1,000,000 shall be available for obligation without further appropriation and shall not be subject to any obligation limitation.

(e) INTERNATIONAL MASS TRANSPORTATION PROGRAM.—

(1) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the United States domestic mass transportation community about technological innovations available in the international marketplace and activities that may afford domestic businesses the opportunity to become globally competitive in the export of mass transportation products and services. Such activities may include—

(A) development, monitoring, assessment, and dissemination domestically of information about worldwide mass transportation market opportunities;

(B) cooperation with foreign public sector entities in research, development, demonstration, training, and other forms of technology transfer and exchange of experts and information;

(C) advocacy, in international mass transportation markets, of firms, products, and services available from the United States;

(D) informing the international market about the technical quality of mass transportation products and services through participation in seminars, expositions, and similar activities; and

(E) offering those Federal Transit Administration technical services which cannot be readily obtained from the United States private sector to foreign public authorities planning or undertaking mass transportation projects if the cost of these services will be recovered under the terms of each project.

(2) COOPERATION.—The Secretary may carry out activities under this subsection in cooperation with other Federal agencies, State or local agencies, public and private nonprofit institutions, government laboratories, foreign governments, or any other organization the Secretary determines is appropriate.

(3) FUNDING.—The funds available to carry out this subsection shall include revenues paid to the Secretary by any co-operating organization or person. Such revenues shall be accounted for separately within the Mass Transit Account of the Highway Trust Fund and shall be available to the Secretary to carry out activities under this subsection, including promotional materials, travel, reception, and representation expenses necessary to carry out such activities. Annual revenues that are less than \$1,000,000 shall be available for obligation without further appropriation and shall not be subject to any obligation limitation. Not later than January 1 of each fiscal year, the Secretary shall publish a report on the activities under this paragraph funded from the account.

§ 5311. Formula grants for other than urbanized areas

(a) DEFINITION.—In this section, “recipient” includes a State authority, a local governmental authority, a nonprofit organization, and an operator of mass transportation service.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants for transportation projects that are included in a State program of mass transportation service projects (including service agreements with private providers of mass transportation service) for areas other than urbanized areas. The program shall be submitted annually to the Secretary. The Secretary may approve the program only if the Secretary finds that the program provides a fair distribution of amounts in the State, including Indian reservations, and the maximum feasible coordination of mass transportation service assisted under this section with transportation service assisted by other United States Government sources.

(2) The Secretary of Transportation shall carry out a rural transportation assistance program in nonurbanized areas. In carrying out this paragraph, the Secretary may make grants and contracts for transportation research, technical assistance, training, and related support services in nonurbanized areas.

(c) APPORTIONING AMOUNTS.—The Secretary of Transportation shall apportion amounts made available under section 5338(a) of this title so that the chief executive officer of each State receives an amount equal to the total amount apportioned multiplied by a ratio equal to the population of areas other than urbanized areas

in a State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent of the following: the latest Government census, the population estimate the Secretary of Commerce prepares after the 4th year after the date the latest census is published, or the population estimate the Secretary of Commerce prepares after the 8th year after the date the latest census is published. The amount may be obligated by the chief executive officer for 2 years after the fiscal year in which the amount is apportioned. An amount that is not obligated at the end of that period shall be reapportioned among the States for the next fiscal year.

(d) **USE FOR LOCAL TRANSPORTATION SERVICE.**—A State may use an amount apportioned under this section for a project included in a program under subsection (b) of this section and eligible for assistance under this chapter if the project will provide local transportation service, as defined by the Secretary of Transportation, in an area other than an urbanized area.

(e) **USE FOR ADMINISTRATION AND TECHNICAL ASSISTANCE.**—(1) The Secretary of Transportation may allow a State to use not more than 15 percent of the amount apportioned under this section to administer this section and provide technical assistance to a recipient, including project planning, program and management development, coordination of mass transportation programs, and research the State considers appropriate to promote effective delivery of mass transportation to an area other than an urbanized area.

(2) Except as provided in this section, a State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

(f) **INTERCITY BUS TRANSPORTATION.**—(1) A State shall expend at least 15 percent of the amount made available in each fiscal year after September 30, 1993, to carry out a program to develop and support intercity bus transportation. Eligible activities under the program include—

(A) planning and marketing for intercity bus transportation;

(B) capital grants for intercity bus shelters;

(C) joint-use stops and depots;

(D) operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects; and

(E) coordinating rural connections between small mass transportation operations and intercity bus carriers.

(2) A State does not have to comply with paragraph (1) of this subsection in a fiscal year in which the chief executive officer of the State certifies to the Secretary of Transportation that the intercity bus service needs of the State are being met adequately.

(g) **GOVERNMENT'S SHARE OF COSTS.**—(1) In this subsection, "amounts of the Government or revenues" do not include amounts received under a service agreement with a State or local social service agency or a private social service organization.

(2) A grant of the Government for a capital project under this section may not be more than 80 percent of the net cost of the project, as determined by the Secretary of Transportation. A grant to pay a subsidy for operating expenses may not be more than 50

percent of the net cost of the operating expense project. At least 50 percent of the remainder shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation. Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(h) AMOUNTS FOR OPERATING ASSISTANCE.—An amount made available under this section may be used for operating assistance.

(i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

(j) RELATIONSHIP TO OTHER LAWS.—(1) Sections 5323(a)(1)(D) and 5333(b) of this title apply to this section but the Secretary of Labor may waive the application of section 5333(b).

(2) This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.

§ 5312. Research, development, demonstration, and training projects

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may undertake, or make grants or contracts (including agreements with departments, agencies, and instrumentalities of the United States Government) for, research, development, and demonstration projects related to urban mass transportation that the Secretary decides will help reduce urban transportation needs, improve mass transportation service, or help mass transportation service meet the total urban transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.

(b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may make grants to nonprofit institutions of higher learning—

(A) to conduct competent research and investigations into the theoretical or practical problems of urban transportation; and

(B) to train individuals to conduct further research or obtain employment in an organization that plans, builds, operates, or manages an urban transportation system.

(2) Research and investigations under this subsection include—

(A) the design and use of urban mass transportation systems and urban roads and highways;

(B) the interrelationship between various modes of urban and interurban transportation;

(C) the role of transportation planning in overall urban planning;

(D) public preferences in transportation;

(E) the economic allocation of transportation resources; and

(F) the legal, financial, engineering, and esthetic aspects of urban transportation.

(3) When making a grant under this subsection, the appropriate Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to urban transportation problems.

(c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METHODS.—(1) The Secretary of Transportation may make grants to States, local governmental authorities, and operators of mass transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the mass transportation field.

(2) The Secretary of Transportation may make grants to State and local governmental authorities for projects that will use innovative techniques and methods in managing and providing mass transportation.

(3) A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the mass transportation industry. The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient mass transportation operation. A grant for a fellowship may not be more than the lesser of \$24,000 or 75 percent of—

(A) tuition and other charges to the fellowship recipient;

(B) additional costs incurred by the training institution and billed to the grant recipient; and

(C) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

(d) JOINT PARTNERSHIP PROGRAM FOR DEPLOYMENT OF INNOVATION.—

(1) DEFINITION OF CONSORTIUM.—In this subsection, the term “consortium”—

(A) means 1 or more public or private organizations located in the United States that provide mass transportation service to the public and 1 or more businesses, including small- and medium-sized businesses, incorporated in a State, offering goods or services or willing to offer goods and services to mass transportation operators; and

(B) may include, as additional members, public or private research organizations located in the United States, or State or local governmental authorities.

(2) GENERAL AUTHORITY.—The Secretary may, under terms and conditions that the Secretary prescribes, enter into grants, contracts, cooperative agreements, and other agreements with consortia selected in accordance with paragraph (4), to promote the early deployment of innovation in mass transportation services, management, operational practices, or technology that has broad applicability. This paragraph shall be carried out in consultation with the transit industry by competitively selected

consortia that will share costs, risks, and rewards of early deployment of innovation.

(3) CONSORTIUM CONTRIBUTION.—A consortium assisted under this subsection shall provide not less than 50 percent of the costs of any joint partnership project. Any business, organization, person, or governmental body may contribute funds to a joint partnership project.

(4) NOTICE REQUIREMENT.—The Secretary shall periodically give public notice of the technical areas for which joint partnerships are solicited, required qualifications of consortia desiring to participate, the method of selection and evaluation criteria to be used in selecting participating consortia and projects, and the process by which innovation projects described in paragraph (1) will be awarded.

(5) USE OF REVENUES.—The Secretary shall accept, to the maximum extent practicable, a portion of the revenues resulting from sales of an innovation project funded under this section. Such revenues shall be accounted for separately within the Mass Transit Account of the Highway Trust Fund and shall be available to the Secretary for activities under this subsection. Annual revenues that are less than \$1,000,000 shall be available for obligation without further appropriation and shall not be subject to any obligation limitation.

(e) INTERNATIONAL MASS TRANSPORTATION PROGRAM.—

(1) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the United States domestic mass transportation community about technological innovations available in the international marketplace and activities that may afford domestic businesses the opportunity to become globally competitive in the export of mass transportation products and services. Such activities may include—

(A) development, monitoring, assessment, and dissemination domestically of information about worldwide mass transportation market opportunities;

(B) cooperation with foreign public sector entities in research, development, demonstration, training, and other forms of technology transfer and exchange of experts and information;

(C) advocacy, in international mass transportation markets, of firms, products, and services available from the United States;

(D) informing the international market about the technical quality of mass transportation products and services through participation in seminars, expositions, and similar activities; and

(E) offering those Federal Transit Administration technical services which cannot be readily obtained from the United States private sector to foreign public authorities planning or undertaking mass transportation projects if the cost of these services will be recovered under the terms of each project.

(2) COOPERATION.—The Secretary may carry out activities under this subsection in cooperation with other Federal agencies, State or local agencies, public and private nonprofit insti-

tutions, government laboratories, foreign governments, or any other organization the Secretary determines is appropriate.

(3) FUNDING.—The funds available to carry out this subsection shall include revenues paid to the Secretary by any cooperating organization or person. Such revenues shall be accounted for separately within the Mass Transit Account of the Highway Trust Fund and shall be available to the Secretary to carry out activities under this subsection, including promotional materials, travel, reception, and representation expenses necessary to carry out such activities. Annual revenues that are less than \$1,000,000 shall be available for obligation without further appropriation and shall not be subject to any obligation limitation. Not later than January 1 of each fiscal year, the Secretary shall publish a report on the activities under this paragraph funded from the account.

§ 5313. State planning and research programs

(a) COOPERATIVE RESEARCH PROGRAM.—(1) The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(d) of this title are available for a mass transportation cooperative research program. The Secretary of Transportation shall establish an independent governing board for the program. The board shall recommend mass transportation research, development, and technology transfer activities the Secretary considers appropriate.

(2) The Secretary may make grants to, and cooperative agreements with, the National Academy of Sciences to carry out activities under this subsection that the Secretary decides are appropriate.

(b) STATE PLANNING AND RESEARCH.—(1) The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title shall be apportioned to States for grants and contracts consistent with the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title. The amounts shall be apportioned so that each State receives an amount equal to the population in urbanized areas in the State, divided by the population in urbanized areas in all States, as shown by the latest available decennial census. However, a State must receive at least .5 percent of the amount apportioned under this subsection.

(2) A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (a) of this section.

(3) An amount apportioned under this subsection—

(A) remains available for 3 years after the fiscal year in which the amount is apportioned; and

(B) that is unobligated at the end of the 3-year period shall be reapportioned among the States for the next fiscal year.

(c) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant or contract financed under subsection (a) of this section, the Secretary shall establish a United States Government share consistent with the benefit.

§ 5314. National planning and research programs

(a) PROGRAM.—(1) The amounts made available under subsections (d) and (h)(7) of section 5338 of this title are available to the Secretary of Transportation for grants and contracts for the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title, as the Secretary considers appropriate.

(2) Of the amounts made available under paragraph (1) of this subsection, the Secretary shall make available at least \$3,000,000 to provide mass transportation-related technical assistance, demonstration programs, research, public education, and other activities the Secretary considers appropriate to help mass transportation providers comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). To the extent practicable, the Secretary shall carry out this paragraph through a contract with a national nonprofit organization serving individuals with disabilities that has a demonstrated capacity to carry out the activities.

(3) Not more than 25 percent of the amounts available under paragraph (1) of this subsection is available to the Secretary for special demonstration initiatives, subject to terms the Secretary considers consistent with this chapter, except that section 5323(a)(1)(D) of this title applies to an operational grant financed in carrying out section 5312(a) of this title. For a nonrenewable grant of not more than \$100,000, the Secretary shall provide expedited procedures on complying with the requirements of this chapter.

(4)(A) The Secretary may undertake a program of mass transportation technology development in coordination with affected entities.

(B) The Secretary shall establish an Industry Technical Panel composed of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in identifying priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.

(C) The Secretary shall develop guidelines for cost sharing in technology development projects financed under this paragraph. The guidelines shall be flexible and reflect the extent of technical risk, market risk, and anticipated supplier benefits and payback periods.

(5) The Secretary may use amounts appropriated under this subsection to supplement amounts available under section 5313(a) of this title, as the Secretary considers appropriate.

(b) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant or contract financed under subsection (a) of this section, the Secretary shall establish a United States Government share consistent with the benefit.

§ 5315. National transit institute

(a) ESTABLISHMENT AND DUTIES.—The Secretary of Transportation shall make grants to Rutgers University to establish a national transit institute. In cooperation with the Federal Transit

Administration, State transportation departments, public mass transportation authorities, and national and international entities, the institute shall develop and conduct training programs of instruction for United States Government, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid mass transportation work. The programs may include courses in recent developments, techniques, and procedures related to—

- (1) mass transportation planning;
- (2) management;
- (3) environmental factors;
- (4) acquisition and joint use of rights of way;
- (5) engineering and architectural design;
- (6) procurement strategies for mass transportation systems;
- (7) turnkey approaches to delivering mass transportation systems;
- (8) new technologies;
- (9) emission reduction technologies;
- (10) ways to make mass transportation accessible to individuals with disabilities;
- (11) construction, construction management, insurance, and risk management;
- (12) maintenance;
- (13) contract administration;
- (14) inspection;
- (15) innovative finance; and
- (16) workplace safety.

(b) RELATED EDUCATIONAL AND TRAINING PROGRAMS.—The Secretary shall delegate to the institute the authority of the Secretary to develop and conduct educational and training programs related to mass transportation.

(c) PROVIDING EDUCATION AND TRAINING.—Education and training of Government, State, and local transportation employees under this section shall be provided—

(1) by the Secretary at no cost to the States and local governments for subjects that are a Government program responsibility; or

(2) when the education and training are paid under subsection (d) of this section, by the State, with the approval of the Secretary, through grants and contracts with public and private agencies, other institutions, individuals, and the institute.

(d) AVAILABILITY OF AMOUNTS.—Not more than .5 percent of the amounts made available for a fiscal year beginning after September 30, 1991, to a State or public mass transportation authority in the State to carry out sections 5307 and 5309 of this title is available for expenditure by the State and public mass transportation authorities in the State, with the approval of the Secretary, to pay not more than 80 percent of the cost of tuition and direct educational expenses related to educating and training State and local transportation employees under this section.

[§§ 5316 and 5317. Repealed by sec. 5110(c) of P.L. 105-178]

§ 5318. Bus testing facility

(a) **ESTABLISHMENT.**—The Secretary of Transportation shall establish one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. The facility shall be established by renovating a facility built with assistance of the United States Government to train rail personnel.

(b) **OPERATION AND MAINTENANCE.**—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, a qualified person or organization to operate and maintain the facility. The contract, cooperative agreement, or grant may provide for the testing of rail cars and other mass transportation vehicles at the facility.

(c) **FEES.**—The person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary must approve the fees.

(d) **AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.**—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available under section 5309(m)(1)(C) of this title. The entity having the vehicle tested shall pay 20 percent of the cost.

(e) **REVOLVING LOAN FUND.**—The Secretary has a bus testing revolving loan fund consisting of amounts authorized for the fund under section 317(b)(5) of the Surface Transportation and Uniform Relocation Assistance Act of 1987. The Secretary shall make available as repayable advances from the fund to the person operating and maintaining the facility amounts to operate and maintain the facility.

§ 5319. Bicycle facilities

A project to provide access for bicycles to mass transportation facilities, to provide shelters and parking facilities for bicycles in or around mass transportation facilities, or to install equipment for transporting bicycles on mass transportation vehicles is a capital project eligible for assistance under sections 5307, 5309, and 5311 of this title. Notwithstanding sections 5307(e), 5309(h), and 5311(g) of this title, a grant of the United States Government under this chapter for a project made eligible by this section is for 90 percent of the cost of the project, except that, if the grant or any portion of the grant is made with funds required to be expended under section 5307(k) and the project involves providing bicycle access to mass transportation, that grant or portion of that grant shall be at a Federal share of 95 percent.

§ 5320. Suspended light rail system technology pilot project

(a) **PURPOSE.**—The purpose of this section is to provide for the construction by a public entity of a suspended light rail system technology pilot project—

(1) to assess the state of new technology for a suspended light rail system; and

(2) to establish the feasibility, costs, and benefits of using the system to transport passengers.

(b) GENERAL REQUIREMENTS.—The project shall—

(1) use new rail technology with individual vehicles on a prefabricated elevated steel guideway;

(2) be stability-seeking with a center of gravity for the detachable passenger vehicles located below the point of wheel-rail contact; and

(3) use vehicles that are driven by overhead bogies with high efficiency, low maintenance electric motors for each wheel, operating in a slightly sloped plane from vertical for the wheels and the running rails, to further increase stability, acceleration, and braking performance.

(c) COMPETITION.—(1) The Secretary of Transportation shall conduct a national competition to select a public entity with which to make a full funding grant agreement to construct the project. Not later than April 16, 1992, the Secretary shall select 3 public entities to be finalists in the competition. In conducting the competition and selecting public entities, the Secretary shall consider—

(A) the public entity's demonstrated understanding and knowledge of the project and its technical, managerial, and financial capacity to construct, manage, and operate the project; and

(B) maximizing potential contributions to the cost of the project by State, local, and private sector entities, including donation of in-kind services and materials.

(2) The Secretary shall award a grant to each finalist to be used to participate in the final phase of the competition under procedures the Secretary prescribes. A grant may not be more than 80 percent of the cost of participating. A finalist may not receive more than one-third of the amount made available under subsection (h)(1)(A) of this section.

(3) Not later than July 15, 1992, the Secretary shall select from among the 3 finalists a public entity with which to make a full funding grant agreement.

(d) ENVIRONMENTAL IMPACT.—Not later than 270 days after a public entity is selected under subsection (c) of this section, the Secretary shall approve and publish in the Federal Register a notice announcing either a finding of no significant impact or a draft environmental impact statement for the project. The alternatives analysis for the project shall include a decision on whether to construct the project. If a draft statement is published, the Secretary, not later than 180 days after publication, shall approve and publish in the Federal Register a notice of completion of a final environmental impact statement.

(e) FULL FUNDING GRANT AGREEMENT.—Not later than 60 days after carrying out the requirements of subsection (d) of this section, the Secretary shall make a full funding grant agreement under section 5309 of this title with the public entity selected under subsection (c) of this section to construct the project. The agreement shall provide that the system vendor for the project shall finance—

(1) 100 percent of any deficit incurred in operating the project in the first 2 years of revenue operations of the project; and

(2) 50 percent of any deficit incurred in operating the project in the 3d year of revenue operations of the project.

(f) NOTICE TO PROCEED.—Not later than 30 days after making the full funding grant agreement, the Secretary shall issue a notice to proceed with construction.

(g) OPTION NOT TO CONSTRUCT AND REAWARDING THE GRANT.—(1) Not later than 30 days after completing preliminary engineering and design, the selected public entity shall decide whether to proceed to constructing the project. If the entity decides not to proceed—

(A) the Secretary shall not make the full funding grant agreement;

(B) remaining amounts received shall be returned to the Secretary and credited to the Mass Transit Account of the Highway Trust Fund; and

(C) the Secretary shall use the credited amount and other amounts to be provided under this section to award to another entity selected under subsection (c)(1) of this section a grant under section 5309 of this title to construct the project.

(2) Not later than 60 days after a decision is made under paragraph (1) of this subsection, a grant shall be awarded under paragraph (1)(C) of this subsection after completing a competitive process for selecting the grant recipient.

(h) FINANCING.—(1) The Secretary shall pay from amounts provided under section 5309 of this title the following:

(A) at least \$1,000,000 for the fiscal year ending September 30, 1992, for grants under subsection (c)(2) of this section.

(B) at least \$4,000,000 for the fiscal year ending September 30, 1993, for the United States Government share of the costs (as determined under section 5309 of this title) if the systems planning, alternatives analysis, preliminary engineering, and design and environmental impact statement are required by law for the project.

(C) at least \$30,000,000 for the fiscal year ending September 30, 1994, as provided in the grant agreement under subsection (e) of this section, for the Government share of the construction costs of the project.

(2) The grant agreement under subsection (e) of this section shall provide that for the 3d year of revenue operations of the project, the Secretary shall pay from amounts provided under this section the Government share of operating costs in an amount equal to the lesser of 50 percent of the deficit incurred in operating the project in that year or \$300,000.

(3) Amounts not expended under paragraph (1)(A) of this subsection are available for the Government share of costs described in paragraph (1)(B) and (C) of this subsection.

(4) Amounts under paragraph (1)(B) and (C) of this subsection remain available until expended.

(i) GOVERNMENT'S SHARE OF COSTS.—The Government share of the cost of constructing the project is 80 percent of the net cost of the project.

(j) PROJECT NOT SUBJECT TO MAJOR CAPITAL INVESTMENT POLICY.—The project is not subject to the major capital investment policy of the Federal Transit Administration.

(k) REPORT.—Not later than January 30, 1993, and each year after that date, the Secretary shall submit to Congress a report on the progress and results of the project.

§ 5321. Crime prevention and security

The Secretary of Transportation may make capital grants from amounts available under section 5338 of this title to mass transportation systems for crime prevention and security. This chapter does not prevent the financing of a project under this section when a local governmental authority other than the grant applicant has law enforcement responsibilities.

§ 5322. Human resource programs

The Secretary of Transportation may undertake, or make grants and contracts for, programs that address human resource needs as they apply to mass transportation activities. A program may include—

- (1) an employment training program;
- (2) an outreach program to increase minority and female employment in mass transportation activities;
- (3) research on mass transportation personnel and training needs; and
- (4) training and assistance for minority business opportunities.

§ 5323. General provisions on assistance

(a) INTERESTS IN PROPERTY.—(1) Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or buy property of, a private mass transportation company, for a capital project for property acquired from a private mass transportation company after July 9, 1964, or to operate mass transportation equipment or a mass transportation facility in competition with, or in addition to, transportation service provided by an existing mass transportation company, only if—

(A) the Secretary of Transportation finds the assistance is essential to a program of projects required under sections 5303–5306 of this title;

(B) the Secretary of Transportation finds that the program, to the maximum extent feasible, provides for the participation of private mass transportation companies;

(C) just compensation under State or local law will be paid to the company for its franchise or property; and

(D) the Secretary of Labor certifies that the assistance complies with section 5333(b) of this title.

(2) A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in mass transportation from another governmental authority in the same geographic area.

(b) NOTICE AND PUBLIC HEARING.—(1) An application for a grant or loan under this chapter for a capital project that will af-

fect substantially a community, or the mass transportation service of a community, must include a certificate of the applicant that the applicant has—

(A) provided an adequate opportunity for a public hearing with adequate prior notice;

(B) held that hearing unless no one with a significant economic, social, or environmental interest requested one;

(C) considered the economic, social, and environmental effects of the project; and

(D) found that the project is consistent with official plans for developing the urban area.

(2) Notice of a hearing under this subsection shall include a concise description of the proposed project and shall be published in a newspaper of general circulation in the geographic area the project will serve. If a hearing is held, a copy of the transcript of the hearing shall be submitted with the application.

(c) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter after September 30, 1989, may be obligated or expended to acquire a new bus model only if a bus of the model has been tested at the facility established under section 5318 of this title.

(d) CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—

(1) Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of mass transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled mass transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

(2) On receiving a complaint about a violation of an agreement, the Secretary of Transportation shall investigate and decide whether a violation has occurred. If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement. In addition to a remedy specified in the agreement, the Secretary may bar a recipient under this subsection or an operator from receiving further assistance when the Secretary finds a continuing pattern of violations of the agreement.

(e) BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.—The initial advertising by a State or local governmental authority for bids to acquire buses using financial assistance under this chapter may include passenger seat functional specifications that are at least equal to performance specifications the Secretary of Transportation prescribes. The specifications shall be based on a finding by the State or local governmental authority of local requirements for safety, comfort, maintenance, and life cycle costs.

(f) SCHOOLBUS TRANSPORTATION.—(1) Financial assistance under this chapter may be used for a capital project, or to operate mass transportation equipment or a mass transportation facility,

only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system;

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates; and

(C) to a State or local governmental authority if it or a direct predecessor in interest from which it acquired the duty of transporting school children and personnel, and facilities to transport them, provided schoolbus transportation at any time after November 25, 1973, but before November 26, 1974.

(2) An applicant violating an agreement under this subsection may not receive other financial assistance under this chapter.

(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 103(e)(4) and 142(a) or (c) of title 23. However, subsection (f)(1)(C) of this section applies to sections 103(e)(4) and 142(a) or (c) only if schoolbus transportation was provided at any time after August 12, 1972, but before August 13, 1973.

(h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used to—

(1) pay ordinary governmental or nonproject operating expenses; or

(2) support a procurement that uses an exclusionary or discriminatory specification.

(i) GOVERNMENT SHARE OF COSTS FOR CERTAIN PROJECTS.—A grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or vehicle-related equipment (including clean fuel or alternative fuel vehicle-related equipment) for purposes of complying with or maintaining compliance with the Clean Air Act, is for 90 percent of the net project cost of such equipment attributable to compliance with those Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs of such equipment attributable to compliance with those Acts.

(j) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) applying paragraph (1) would be inconsistent with the public interest;

(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

- (i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and
 - (ii) final assembly of the rolling stock has occurred in the United States; or
 - (D) including domestic material will increase the cost of the overall project by more than 25 percent.
- (3) In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.
- (4) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—
- (A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and
 - (B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.
- (5) A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations, to receive a contract or sub-contract made with amounts authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1914) if a court or department, agency, or instrumentality of the Government decides the person intentionally—
- (A) affixed a “Made in America” label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or
 - (B) represented that goods described in clause (A) of this paragraph were produced in the United States.
- (6) The Secretary of Transportation may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.
- (7) OPPORTUNITY TO CORRECT INADVERTENT ERROR.—The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.
- (k) PARTICIPATION OF GOVERNMENTAL AGENCIES IN DESIGN AND DELIVERY OF TRANSPORTATION SERVICES.—To the extent feasible, governmental agencies and nonprofit organizations that receive assistance from Government sources (other than the Depart-

ment of Transportation) for nonemergency transportation services—

(1) shall participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

(2) shall be included in the planning for those services.

(l) APPLICATION OF SECTION 135 OF TITLE 23.—The planning and programming requirements of section 135 of title 23 apply to a grant made under sections 5307–5311 of this title.

(m) PREAWARD AND POSTDELIVERY REVIEW OF ROLLING STOCK PURCHASES.—The Secretary of Transportation shall prescribe regulations requiring a preaward and postdelivery review of a grant under this chapter to buy rolling stock to ensure compliance with Government motor vehicle safety requirements, subsection (j) of this section, and bid specifications requirements of grant recipients under this chapter. Under this subsection, independent inspections and review are required, and a manufacturer certification is not sufficient.

(n) SUBMISSION OF CERTIFICATIONS.—A certification required under this chapter and any additional certification or assurance required by law or regulation to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of a grant application under this chapter. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(e)(2).

(o) GRANT REQUIREMENTS.—The grant requirements under sections 5307 and 5309 apply to any project under this chapter that receives any assistance or other financing under the Transportation Infrastructure Finance and Innovation Act of 1998.

§ 5324. Limitations on discretionary and special needs grants and loans

(a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be provided under section 5309 of this title only if the Secretary of Transportation decides that—

(1) an adequate relocation program is being carried out for families displaced by a project; and

(2) an equal number of decent, safe, and sanitary dwellings are being, or will be, provided to those families in the same area or in another area generally not less desirable for public utilities and public and commercial facilities, at rents or prices within the financial means of those families, and with reasonable access to their places of employment.

(b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In carrying out section 5301(e) of this title, the Secretary of Transportation shall cooperate and consult with the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior and the Council on Environmental Quality on each project that may have a substantial impact on the environment.

(2) In carrying out section 5309 of this title, the Secretary of Transportation shall review each transcript of a hearing submitted under section 5323(b) of this title to establish that an adequate opportunity to present views was given to all parties with a signifi-

cant economic, social, or environmental interest and that the project application includes a statement on—

- (A) the environmental impact of the proposal;
- (B) adverse environmental effects that cannot be avoided;
- (C) alternatives to the proposal; and
- (D) irreversible and irretrievable impacts on the environment.

(3)(A) The Secretary of Transportation may approve an application for financial assistance under section 5309 of this title only if the Secretary makes written findings, after reviewing the application and any hearings held before a State or local governmental authority under section 5323(b) of this title, that—

- (i) an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest;
- (ii) the preservation and enhancement of the environment, and the interest of the community in which a project is located, were considered; and
- (iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(B) If a hearing has not been conducted or the Secretary of Transportation decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(C) A finding of the Secretary of Transportation under subparagraph (A) of this paragraph shall be made a matter of public record.

(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—The Secretary of Transportation may not regulate the operation of a mass transportation system for which a grant is made under section 5309 of this title and, after a grant is made, may not regulate any charge for the system. However, the Secretary may require the local governmental authority, corporation, or association to comply with any undertaking provided by it related to its grant application.

§ 5325. Contract requirements

(a) NONCOMPETITIVE BIDDING.—A capital project or improvement contract for which a grant or loan is made under this chapter, if the contract is not made through competitive bidding, shall provide that records related to the contract shall be made available to the Secretary of Transportation and the Comptroller General, or an officer or employee of the Secretary or Comptroller General, when conducting an audit and inspection.

(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—A contract or requirement for program management, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which a grant or loan is made under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under title IX of the

Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement of a State. When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

(c) **EFFICIENT PROCUREMENT.**—A recipient may award a procurement contract under this chapter to other than the lowest bidder when the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

§ 5326. Special procurements

(a) **TURNKEY SYSTEM PROJECTS.**—

(1) **TURNKEY SYSTEM PROJECT DEFINED.**—In this subsection, the term “turnkey system project” means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a mass transportation system or an operable segment thereof that meets specific performance criteria. Such project may also include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

(2) **SELECTION OF TURNKEY PROJECTS.**—To advance new technologies and lower the cost of a capital project for a new mass transportation system or an operable segment of a mass transportation system, the Secretary of Transportation shall allow solicitation for a turnkey system project to be financed under this chapter to be awarded conditionally before United States Government requirements have been met on the project if the award is made without prejudice to carrying out those requirements. Government financial assistance under this chapter may be made available for the project after the recipient complies with Government requirements.

(3) **DEMONSTRATIONS.**—To develop guidelines applying generally to turnkey system projects, the Secretary may approve at least 2 projects for an initial demonstration phase. The results of the demonstration projects (and other projects using this procurement method on December 18, 1991) shall be considered in developing guidelines to carry out this subsection.

(b) **MULTIYEAR ROLLING STOCK.**—(1) A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

(2) The Secretary shall allow at least 2 recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(c) ACQUIRING ROLLING STOCK.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(d) PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.—A recipient of assistance under section 5307 procuring an associated capital maintenance item under section 5307(b) may enter into a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

(1) the manufacturer or supplier is the only source for the item; and

(2) the price of the item is no more than the price that similar customers pay for the item.

§ 5327. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership

where ridership estimates partly depend on the success of those efforts; and

(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month.

(b) **PLAN APPROVAL.**—(1) The Secretary shall approve a plan not later than 60 days after it is submitted. If the approval cannot be completed within 60 days, the Secretary shall notify the recipient, explain the reasons for the delay, and estimate the additional time that will be required.

(2) The Secretary shall inform the recipient of the reasons when a plan is disapproved.

(c) **LIMITATIONS ON USE OF AVAILABLE AMOUNTS.**—(1) The Secretary may use not more than .5 percent of amounts made available for a fiscal year to carry out section 5307, 5309, or 5311 of this title, an interstate transfer mass transportation project under section 103(e)(4) of title 23 as in effect on September 30, 1991, or a project under the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320) to make a contract to oversee the construction of a major project under section 5307, 5309, 5311, or 103(e)(4) or that Act. The Secretary may use when necessary not more than an additional .25 percent of amounts made available in a fiscal year to carry out a major project under section 5309 to make a contract to oversee the construction of the project.

(2) The Secretary may use amounts available under paragraph (1) of this subsection to enter into contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1) and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section. Subsections (a), (b), and (e) of this section do not apply to contracts under this paragraph.

(3) The Government shall pay the entire cost of carrying out a contract under this subsection.

(d) **ACCESS TO SITES AND RECORDS.**—Each recipient of assistance under this chapter or section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96-184, 93 Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(e) **REGULATIONS.**—The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

(1) a definition of “major capital project” for subsection (c) of this section that excludes a project to acquire rolling stock or to maintain or rehabilitate a vehicle; and

(2) a requirement that oversight begin during the preliminary engineering stage of a project, unless the Secretary finds it more appropriate to begin the oversight during another stage of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

(f) **FINANCIAL PLAN.**—A recipient of financial assistance for a project under this chapter with an estimated total cost of \$1,000,000,000 or more shall submit to the Secretary an annual

financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

§ 5328. Project review

(a) SCHEDULE.—(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant in alternatives analysis and in preparing a draft environmental impact statement and shall approve the draft for circulation not later than 45 days after the applicant submits the draft to the Secretary.

(2) After the draft is circulated and not later than 30 days after the applicant selects a locally preferred alternative, the Secretary shall allow the project to advance to the preliminary engineering stage if the Secretary finds the project is consistent with section 5309(e).

(3) The Secretary shall issue a record of decision and allow a project to advance to the final design stage of construction not later than 120 days after the final environmental impact statement for the project is completed.

(4) The Secretary shall make a full funding grant agreement under section 5309 of this title for a project not later than 120 days after the project enters the final design stage of construction. The agreement shall provide for a United States Government share of the construction cost at least equal to the Government share estimated in the Secretary's most recent report required under section 5309(o)(1) of this title or an update of the report unless the applicant requests otherwise.

(b) ALLOWED DELAYS.—(1) Advancement of a project under the time requirements of subsection (a) of this section may be delayed only—

(A) for the time the applicant may request; or

(B) during the time the Secretary finds, after reasonable notice and an opportunity for comment, that the applicant, for reasons attributable only to the applicant, has not complied substantially with the provisions of this chapter applicable to the project.

(2) Not more than 10 days after imposing a delay under paragraph (1)(B) of this subsection, the Secretary shall give the applicant a written statement explaining the reasons for the delay and describing actions the applicant must take to end the delay.

(3) At least once every 6 months, the Secretary shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on each situation in which the Secretary has not met a time requirement of subsection (a) of this section or delayed a time requirement under paragraph (1)(B) of this subsection. The report shall explain the reasons for the delay and include a plan for achieving timely completion of the Secretary's review.

(c) PROGRAM OF INTERRELATED PROJECTS.—(1) In this subsection, a program of interrelated projects includes the following:

(A) the New Jersey Urban Core Project (as defined in title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 2087)).

(B) the San Francisco Bay Area Rail Extension Program, consisting of at least an extension of the San Francisco Bay Area Rapid Transit District to the San Francisco International Airport (Phase 1a to Colma and Phase 1b to San Francisco Airport), the Santa Clara County Transit District Tasman Corridor Project, a program element designated by a change to the Metropolitan Transportation Commission Resolution No. 1876, and a program element financed completely with non-Government amounts, including the BART Warm Springs Extension, Dublin Extension, and West Pittsburg Extension.

(C) the Los Angeles Metro Rail Minimum Operable Segment-3 Program, consisting of 7 stations and approximately 11.6 miles of heavy rail subway on the following lines:

(i) one line running west and northwest from the Hollywood/Vine station to the North Hollywood station, with 2 intermediate stations.

(ii) one line running west from the Wilshire/Western station to the Pico/San Vicente station, with one intermediate station.

(iii) the East Side Extension, consisting of an initial line of approximately 3 miles, with at least 2 stations, beginning at Union Station and running generally east.

(D) the Baltimore-Washington Transportation Improvement Program, consisting of 3 extensions of the Baltimore Light Rail to Hunt Valley, Penn Station, and Baltimore-Washington Airport, MARC extensions to Frederick and Waldorf, Maryland, and an extension of the Washington Subway system to Largo, Maryland.

(E) the Tri-County Metropolitan Transportation District of Oregon Light Rail Program, consisting of the locally preferred alternative for the Westside Light Rail Project, including system related costs, contained in the Department of Transportation and Related Agencies Appropriations Act, 1991 (Public Law 101-516, 104 Stat. 2155), and defined in House Report 101-584, the Hillsboro extension to the Westside Light Rail Project contained in that Act, and the locally preferred alternative for the South/North Corridor Project.

(F) the Queens Local/Express Connector Program, consisting of the locally preferred alternative for the connection of the 63d Street tunnel extension to the Queens Boulevard lines, the bell-mouth part of the connector that will allow for future access by commuter rail trains and other subway lines to the 63d Street tunnel extension, planning elements for connecting the upper and lower levels to commuter and subway lines in Long Island City, and planning elements for providing a connector for commuter rail transportation to the East side of Manhattan and subway lines to the proposed Second Avenue subway.

(G) the Dallas Area Rapid Transit Authority light rail elements of the New System Plan, consisting of the locally preferred alternative for the South Oak Cliff corridor, the South

Oak Cliff corridor extension-Camp Wisdom, the West Oak Cliff corridor-Westmoreland, the North Central corridor-Park Lane, the North Central corridor-Richardson, Plano, and Garland extensions, the Pleasant Grove corridor-Buckner, and the Carrollton corridors-Farmers Branch and Las Colinas terminal.

(H) other programs designated by law or the Secretary.

(2) Consistent with the time requirements of subsection (a) of this section or as otherwise provided by law, the Secretary shall make at least one full funding grant agreement for each program described in paragraph (1) of this subsection. The agreement shall include commitments to advance each of the applicant's program elements (in the program of interrelated projects) through the appropriate program review stages as provided in subsection (a) or as otherwise provided by law and to provide Government financing for each element. The agreement may be changed to include design and construction of a particular element.

(3) When reviewing a project in a program of interrelated projects, the Secretary shall consider the local financial commitment, transportation effectiveness, and other assessment factors of all program elements to the extent consideration expedites carrying out the project.

(4) Including a program element not financed by the Government in a program of interrelated projects does not impose Government requirements that otherwise would not apply to the element.

§ 5329. Investigation of safety hazards

(a) GENERAL.—The Secretary of Transportation may investigate a condition in equipment, a facility, or an operation financed under this chapter that the Secretary believes causes a serious hazard of death or injury to establish the nature and extent of the condition and how to eliminate or correct it. If the Secretary establishes that a condition causes a hazard, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for correcting it. The Secretary may withhold further financial assistance under this chapter until a plan is approved and carried out.

(b) REPORT.—Not later than June 15, 1992, the Secretary shall submit to Congress a report containing—

(1) a description of actions taken to identify and investigate conditions in a facility, equipment, or way of operating as part of the findings and decisions required of the Secretary in providing a grant or loan under this chapter;

(2) a description of actions of the Secretary to correct or eliminate, as a requirement for making an amount available through a grant or loan under this chapter, a condition found to create a serious hazard of death or injury;

(3) a summary of all passenger-related deaths and injuries resulting from an unsafe condition in a facility, equipment, or way of operating a facility or equipment at least partly financed under this chapter;

(4) a summary of all employee-related deaths and injuries resulting from an unsafe condition in a facility, equipment, or way of operating a facility or equipment at least partly financed under this chapter;

(5) a summary of action of the Secretary to correct or eliminate the unsafe condition to which the deaths and injuries referred to in clauses (3) and (4) of this subsection were attributed;

(6) a summary of actions of the Secretary to alert mass transportation operators of the nature of the unsafe condition found to create a serious hazard of death or injury; and

(7) recommendations of the Secretary to Congress of any legislative or administrative actions necessary to ensure that all recipients of amounts under this chapter will undertake the best way available to correct or eliminate hazards of death or injury, including—

(A) a timetable for undertaking actions;

(B) an estimate of the capital and operating cost to take the actions; and

(C) minimum standards for establishing and carrying out safety plans by recipients of amounts under this chapter.

§ 5330. Withholding amounts for noncompliance with safety requirements

(a) APPLICATION.—This section applies only to States that have rail fixed guideway mass transportation systems not subject to regulation by the Federal Railroad Administration.

(b) GENERAL AUTHORITY.—The Secretary of Transportation may withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title for a fiscal year beginning after September 30, 1994, if the State in the prior fiscal year has not met the requirements of subsection (c) of this section and the Secretary decides the State is not making an adequate effort to comply with subsection (c).

(c) STATE REQUIREMENTS.—A State meets the requirements of this section if the State—

(1) establishes and is carrying out a safety program plan for each fixed guideway mass transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for the system; and

(2) designates a State authority as having responsibility—

(A) to require, review, approve, and monitor the carrying out of each plan;

(B) to investigate hazardous conditions and accidents on the systems; and

(C) to require corrective action to correct or eliminate those conditions.

(d) MULTISTATE INVOLVEMENT.—When more than one State is subject to this section in connection with a single mass transportation authority, the affected States may designate an entity (except the mass transportation authority) to ensure uniform safety standards and enforcement and to meet the requirements of subsection (c) of this section.

(e) AVAILABILITY OF WITHHELD AMOUNTS.—(1) An amount withheld under subsection (b) of this section remains available for

apportionment for use in the State until the end of the 2d fiscal year after the fiscal year for which the amount may be appropriated.

(2) If a State meets the requirements of subsection (c) of this section before the last day of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the Secretary, on the first day on which the State meets the requirements, shall apportion to the State the amount withheld that remains available for apportionment for use in the State. An amount apportioned under this paragraph remains available until the end of the 3d fiscal year after the fiscal year in which the amount is apportioned. An amount not obligated at the end of the 3-year period shall be apportioned for use in other States under section 5336 of this title.

(3) If a State does not meet the requirements of subsection (c) of this section at the end of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the amount shall be apportioned for use in other States under section 5336 of this title.

(f) REGULATIONS.—Not later than December 18, 1992, the Secretary shall prescribe regulations stating the requirements for complying with subsection (c) of this section.

§ 5331. Alcohol and controlled substances testing

(a) DEFINITIONS.—In this section—

(1) “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) whose use the Secretary of Transportation decides has a risk to transportation safety.

(2) “person” includes any entity organized or existing under the laws of the United States, a State, territory, or possession of the United States, or a foreign country.

(3) “mass transportation” means any form of mass transportation, except a form the Secretary decides is covered adequately, for employee alcohol and controlled substances testing purposes, under section 20140 or 31306 of this title.

(b) TESTING PROGRAM FOR MASS TRANSPORTATION EMPLOYEES.—(1)(A) In the interest of mass transportation safety, the Secretary shall prescribe regulations that establish a program requiring mass transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4) of title 23 to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit such operations to conduct preemployment testing of such employees for the use of alcohol.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of mass transpor-

tation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of such a mass transportation employee be conducted when loss of human life occurs in an accident involving mass transportation; and

(B) may require that post-accident testing of such a mass transportation employee be conducted when bodily injury or significant property damage occurs in any other serious accident involving mass transportation.

(c) DISQUALIFICATIONS FOR USE.—(1) When the Secretary of Transportation considers it appropriate, the Secretary shall require disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) of this section who is found—

(A) to have used or been impaired by alcohol when on duty; or

(B) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or regulation.

(2) This section does not supersede any penalty applicable to a mass transportation employee under another law.

(d) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a Government regu-

lation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by non-discriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e) REHABILITATION.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of any mass transportation employee referred to in subsection (b)(1) of this section who is found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent a mass transportation operation from establishing a program under this section in cooperation with another mass transportation operation.

(f) RELATIONSHIP TO OTHER LAWS, REGULATIONS, STANDARDS, AND ORDERS.—(1) A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(2) In prescribing regulations under this section, the Secretary of Transportation—

(A) shall establish only requirements that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(3) This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991,

governing the use of alcohol or a controlled substance by mass transportation employees.

(g) **INELIGIBILITY FOR ASSISTANCE.**—A person is not eligible for financial assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4) of title 23 if the person is required, under regulations the Secretary of Transportation prescribes under this section, to establish a program of alcohol and controlled substances testing and does not establish the program.

§ 5332. Nondiscrimination

(a) **DEFINITION.**—In this section, “person” includes a governmental authority, political subdivision, authority, legal representative, trust, unincorporated organization, trustee, trustee in bankruptcy, and receiver.

(b) **PROHIBITIONS.**—A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, creed, national origin, sex, or age.

(c) **COMPLIANCE.**—(1) The Secretary of Transportation shall take affirmative action to ensure compliance with subsection (b) of this section.

(2) When the Secretary decides that a person receiving financial assistance under this chapter is not complying with subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the person of the decision and require action be taken to ensure compliance with subsection (b).

(d) **AUTHORITY OF SECRETARY FOR NONCOMPLIANCE.**—If a person does not comply with subsection (b) of this section within a reasonable time after receiving notice, the Secretary shall—

(1) direct that no further financial assistance of the United States Government under this chapter be provided to the person;

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought;

(3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(4) take any other action provided by law.

(e) **CIVIL ACTIONS BY ATTORNEY GENERAL.**—The Attorney General may bring a civil action for appropriate relief when—

(1) a matter is referred to the Attorney General under subsection (d)(2) of this section; or

(2) the Attorney General believes a person is engaged in a pattern or practice in violation of this section.

(f) **APPLICATION AND RELATIONSHIP TO OTHER LAWS.**—This section applies to an employment or business opportunity and is in addition to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

§ 5333. Labor standards

(a) **PREVAILING WAGES REQUIREMENT.**—The Secretary of Transportation shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed

with a grant or loan under this chapter be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The Secretary of Transportation may approve a grant or loan only after being assured that required labor standards will be maintained on the construction work. For a labor standard under this subsection, the Secretary of Labor has the same duties and powers stated in Reorganization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(b) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(b) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(b) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11326 of this title.

§ 5334. Administrative provisions

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) prescribe terms for a project under sections 5307 and 5309–5311 of this title (except terms the Secretary of Labor prescribes under section 5333(b) of this title);

(2) sue and be sued;

(3) foreclose on property or bring a civil action to protect or enforce a right conferred on the Secretary of Transportation by law or agreement;

(4) buy property related to a loan under this chapter;

(5) agree to pay an annual amount in place of a State or local tax on real property acquired or owned under this chapter;

(6) sell, exchange, or lease property, a security, or an obligation;

(7) obtain loss insurance for property and assets the Secretary of Transportation holds;

(8) consent to a modification in an agreement under this chapter;

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter; and

(10) collect fees to cover the costs of training or conferences, including costs of promotional materials, sponsored by the Federal Transit Administration to promote mass transportation and credit amounts collected to the appropriation concerned.

(b) PROCEDURES FOR PRESCRIBING REGULATIONS.—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual regulatory agenda that lists regulatory activities of the Federal Transit Administration. The Secretary shall submit the agenda to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

(2) Except for emergency regulations, the Secretary of Transportation shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary because of the routine nature or insignificant impact of the regulation or that an emergency regulation should be issued. The Secretary may extend the 60-day period if the Secretary decides the period is insufficient to allow diligent individuals to prepare comments or that other circumstances justify an extension.

(3) An emergency regulation ends 120 days after it is issued.

(4) The Secretary of Transportation shall comply with this section (except subsections (h) and (i)) and sections 5323(a)(2), 5323(c), 5323(e), 5324(c), 5325(a), 5325(b), 5326(c), and 5326(d) when proposing or carrying out a regulation governing an activity under this chapter, except for a routine matter or a matter with no significant impact.

(c) BUDGET PROGRAM AND SET OF ACCOUNTS.—The Secretary of Transportation shall—

(1) submit each year a budget program as provided in section 9103 of title 31; and

(2) maintain a set of accounts for audit under chapter 35 of title 31.

(d) DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of Transportation shall deposit amounts made available to the Secretary under this chapter in a checking account in the Treasury. Receipts, assets, and amounts obtained or held by the Secretary to carry out this chapter are available for administrative expenses to carry out this chapter.

(e) BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial transaction of the Secretary of Transportation under this chapter

and a related voucher are binding on all officers and employees of the United States Government.

(f) DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law related to the Government acquiring, using, or disposing of real property, the Secretary of Transportation may deal with property acquired under subsection (a)(3) or (4) of this section in any way. However, this subsection does not—

(1) deprive a State or political subdivision of a State of jurisdiction of the property; or

(2) impair the civil rights, under the laws of a State or political subdivision of a State, of an inhabitant of the property.

(g) TRANSFER OF ASSETS NO LONGER NEEDED.—(1) If a recipient of assistance under this chapter decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides—

(A) the asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

(2) A decision under paragraph (1) of this section must be in writing and include the reason for the decision.

(3) This subsection is in addition to another law related to using and disposing of a facility or equipment under an assistance agreement.

(4) PROCEEDS FROM THE SALE OF TRANSIT ASSETS.—

(A) IN GENERAL.—When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for mass transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

(B) USE.—The net income from asset sales, uses, or leases (including lease renewals) under this subsection shall be used by the recipient to reduce the gross project cost of other capital projects carried out under this chapter.

(C) RELATIONSHIP TO OTHER AUTHORITY.—The authority of the Secretary under this subsection is in addition to existing authorities controlling allocation or use of recipi-

ent income otherwise permissible in law or regulation in effect prior to the date of enactment of this paragraph.

(h) TRANSFER OF AMOUNTS AND NON-GOVERNMENT SHARE.—(1) Amounts made available for a mass transportation project under title 23 shall be transferred to and administered by the Secretary of Transportation under this chapter. Amounts made available for a highway project under this chapter shall be transferred to and administered by the Secretary under title 23.

(2) The provisions of title 23 related to the non-Government share apply to amounts under title 23 used for mass transportation projects. The provisions of this chapter related to the non-Government share apply to amounts under this chapter used for highway projects.

(i) AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development shall—

(1) carry out section 5312(a) and (b)(1) of this title related to—

(A) urban transportation systems and planned development of urban areas; and

(B) the role of transportation planning in overall urban planning; and

(2) advise and assist the Secretary of Transportation in making findings under section 5323(a)(1)(A) of this title.

(j) RELATIONSHIP TO OTHER LAWS.—(1) Section 9107(a) of title 31 applies to the Secretary of Transportation under this chapter.

(2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a contract for more than \$1,000 for services or supplies related to property acquired under this chapter.

§ 5335. Reports and audits

(a) NATIONAL TRANSIT DATABASE.—(1) To help meet the needs of individual mass transportation systems, the United States Government, State and local governments, and the public for information on which to base mass transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate mass transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.

(2) The Secretary may make a grant under section 5307 of this title only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

(b) BIENNIAL TRANSFERABILITY REPORT.—In January 1993, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on carrying out section 5307(b)(5) of this title. The report shall—

(1) identify, by State, the amount of mass transportation money transferred for non-mass transportation purposes under section 5307(b)(5) of this title during the prior fiscal year;

(2) include an assessment of the impact of the transfers on the mass transportation needs of individuals and communities in the State, including the impact on—

(A) the State's ability to meet the mass transportation needs of elderly individuals and individuals with disabilities;

(B) efforts to meet the objectives of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(C) the State's efforts to extend public mass transportation services to unserved rural areas; and

(3) examine the relative levels of Government mass transportation assistance and services in urban and rural areas in the fiscal year that ended September 30, 1991, and the extent to which the assistance and service has changed in later fiscal years because of mass transportation resources made available under this chapter and the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1914).

§ 5336. Apportionment of appropriations for formula grants

(a) **BASED ON URBANIZED AREA POPULATION.**—Of the amount made available or appropriated under section 5338(a) of this title—

(1) 9.32 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the latest United States Government census; and

(B) 50 percent of the total amount apportioned multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile; and

(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section.

(b) **BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-MILES, AND PASSENGER-MILES.**—(1) In this subsection, “fixed guideway revenue vehicle-miles” and “fixed guideway route-miles” include ferry boat operations directly or under contract by the designated recipient.

(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the num-

ber of fixed guideway revenue vehicle-miles attributable to the area, as established by the Secretary of Transportation, divided by the total number of all fixed guideway revenue vehicle-miles attributable to all areas; and

(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway route-miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway route-miles attributable to all areas. An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) the number of fixed guideway vehicle passenger-miles traveled multiplied by the number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in an area; divided by

(ii) the total number of fixed guideway vehicle passenger-miles traveled multiplied by the total number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

(C) Under subparagraph (A) of this paragraph, fixed guideway revenue vehicle- or route-miles, and passengers served on those miles, in an urbanized area with a population of less than 200,000, where the miles and passengers served otherwise would be attributable to an urbanized area with a population of at least 1,000,000 in an adjacent State, are attributable to the governmental authority in the State in which the urbanized area with a population of less than 200,000 is located. The authority is deemed an urbanized area with a population of at least 200,000 if the authority makes a contract for the service.

(D) A recipient's apportionment under subparagraph (A)(i) of this paragraph may not be reduced if the recipient, after satisfying the Secretary of Transportation that energy or operating efficiencies would be achieved, reduces revenue vehicle-miles but provides the same frequency of revenue service to the same number of riders.

(c) BASED ON BUS REVENUE VEHICLE-MILES AND PASSENGER-MILES.—Of the amount apportioned under subsection (a)(2) of this section, 66.71 percent shall be apportioned as follows:

(1) 90.8 percent of the total amount apportioned under this subsection shall be apportioned as follows:

(A) 73.39 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each ur-

banized area with a population of at least 1,000,000 is entitled to receive an amount equal to—

(i) 50 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—

(i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(A) the number of bus passenger-miles traveled multiplied by the number of bus passenger-miles traveled for each dollar of operating cost in an area; divided by

(B) the total number of bus passenger-miles traveled multiplied by the total number of bus passenger-miles traveled for each dollar of operating cost in all areas.

(d) [Reserved.]

(e) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—

(1) apportion amounts appropriated under subsections (a) and (h)(2) of section 5338 of this title to carry out section 5307 of this title not later than the 10th day after the date the

amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and

(2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than modernization

(a) DISTRIBUTION.—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for each of fiscal years 1998 through 2003 as follows:

(1) The first \$497,700,000 shall be apportioned in the following urbanized areas as follows:

- (A) Baltimore, \$8,372,000.
- (B) Boston, \$38,948,000.
- (C) Chicago/Northwestern Indiana, \$78,169,000.
- (D) Cleveland, \$9,509,500.
- (E) New Orleans, \$1,730,588.
- (F) New York, \$176,034,461.
- (G) Northeastern New Jersey, \$50,604,653.
- (H) Philadelphia/Southern New Jersey, \$58,924,764.
- (I) Pittsburgh, \$13,662,463.
- (J) San Francisco, \$33,989,571.
- (K) Southwestern Connecticut, \$27,755,000.

(2) The next \$70,000,000 shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A).

(B) 50 percent in other urbanized areas eligible for assistance under section 5336(b)(2)(A) to which amounts were apportioned under this section for fiscal year 1997, as provided in section 5336(b)(2)(A) and subsection (e)(1) of this section.

(3) The next \$5,700,000 shall be apportioned in the following urbanized areas as follows:

- (A) Pittsburgh, 61.76 percent.
- (B) Cleveland, 10.73 percent.
- (C) New Orleans, 5.79 percent.

(D) 21.72 percent in urbanized areas to which paragraph (2)(B) applies, as provided in section 5336(b)(2)(A) and subsection (e)(1) of this section.

(4) The next \$186,600,000 shall be apportioned in each urbanized area to which paragraph (1) applies and in each urbanized area to which paragraph (2)(B) applies, as provided in section 5336(b)(2)(A) and subsection (e)(1) of this section.

(5) The next \$70,000,000 shall be apportioned as follows:

(A) 65 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(B) 35 percent to other urbanized areas eligible for assistance under section 5336(b)(2)(A) if the areas contain fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available and in any urbanized area if, before the first day of the fiscal year, the area satisfies the Secretary that the area has modernization needs that cannot adequately be met with amounts received under section 5336(b)(2)(A), as

provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(6) The next \$50,000,000 shall be apportioned as follows:

(A) 60 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(B) 40 percent to urbanized areas to which paragraph (5)(B) applies, as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(7) Remaining amounts shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(B) 50 percent to urbanized areas to which paragraph (5)(B) applies, as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(b) TOTAL AMOUNTS NOT AVAILABLE.—In a fiscal year in which the total amounts authorized under subsection (a)(1) and (2) of this section are not available, the Secretary shall reduce on a proportionate basis the apportionments of all urbanized areas eligible under subsection (a)(1) or (2) to adjust for the amount not available.

(c) NEW JERSEY TRANSIT CORPORATION.—Rail modernization amounts allocated to the New Jersey Transit Corporation under this section may be spent in any urbanized area in which the New Jersey Transit Corporation operates rail transportation, regardless of which urbanized area generates the financing.

(d) AVAILABILITY OF AMOUNTS.—An amount apportioned under this section—

(1) remains available for 3 years after the fiscal year in which the amount is apportioned; and

(2) that is unobligated at the end of the 3-year period shall be reapportioned for the next fiscal year among urbanized areas eligible under subsection (a)(1)–(3) of this section using the apportionment formula of this section.

(e) SPECIAL RULE FOR OCTOBER 1, 1997, THROUGH MARCH 31, 1998.—The Secretary shall determine the amount that each urbanized area is to be apportioned for fixed guideway modernization under this section on a pro rata basis to reflect the partial fiscal year 1998 funding made available by section 5338(b)(1)(F).

(e)¹ ROUTE SEGMENTS TO BE INCLUDED IN APPORTIONMENT FORMULAS.—

(1) 1997 STANDARD.—Amounts apportioned under paragraphs (2)(B), (3), and (4) of subsection (a) shall have attributable to each urbanized area only the number of fixed guideway revenue miles of service and number of fixed guideway route miles for segments of fixed guideway systems used to determine apportionments for fiscal year 1997.

(2) OTHER STANDARDS.—Amounts apportioned under paragraphs (5) through (7) of subsection (a) shall have attributable to each urbanized area only the number of fixed guideway rev-

¹So in law. Should have been designated “(f)”. See section 3028(b) of Public Law 105–178 (112 Stat. 367).

enue miles of service and number of fixed guideway route-miles for segments of fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.

§ 5338. Authorizations

(a) FORMULA GRANTS.—

(1) FISCAL YEAR 1998.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5310, and 5311, \$2,260,000,000 for fiscal year 1998.

(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5307, 5310, and 5311, \$240,000,000 for fiscal year 1998.

(C) ALLOCATION OF FUNDS.—Of the aggregate of amounts made available by and appropriated under this paragraph for a fiscal year—

(i) \$4,849,950 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

(ii) \$62,219,389 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

(iii) \$134,077,934 shall be available to provide financial assistance for other than urbanized areas under section 5311; and

(iv) \$2,298,852,727 shall be available to provide financial assistance for urbanized areas under section 5307.

(2) FISCAL YEARS 1999 THROUGH 2003.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5310, and 5311—

(i) \$2,280,000,000 for fiscal year 1999;

(ii) \$2,478,400,000 for fiscal year 2000;

(iii) \$2,676,000,000 for fiscal year 2001;

(iv) \$2,873,600,000 for fiscal year 2002; and

(v) \$3,071,200,000 for fiscal year 2003.

(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5307, 5308, 5310, and 5311—

(i) \$570,000,000 for fiscal year 1999;

(ii) \$619,600,000 for fiscal year 2000;

(iii) \$669,000,000 for fiscal year 2001;

(iv) \$718,400,000 for fiscal year 2002; and

(v) \$767,800,000 for fiscal year 2003.

(C) ALLOCATION OF FUNDS.—Of the aggregate of amounts made available by and appropriated under this paragraph for a fiscal year—

(i) \$4,849,950 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

(ii) \$50,000,000 shall be available to carry out section 5308; and

(iii) of the remaining amount—

(I) 2.4 percent shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

(II) 6.37 percent shall be available to provide financial assistance for other than urbanized areas under section 5311; and

(III) 91.23 percent shall be available to provide financial assistance for urbanized areas under section 5307.

(b) CAPITAL PROGRAM GRANTS AND LOANS.—

(1) FISCAL YEAR 1998.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309, \$2,000,000,000 for fiscal year 1998.

(2) FISCAL YEARS 1999 THROUGH 2003.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309—

(i) \$1,805,600,000 for fiscal year 1999;

(ii) \$1,960,800,000 for fiscal year 2000;

(iii) \$2,116,800,000 for fiscal year 2001;

(iv) \$2,272,800,000 for fiscal year 2002; and

(v) \$2,428,800,000 for fiscal year 2003.

(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5309—

(i) \$451,400,000 for fiscal year 1999;

(ii) \$490,200,000 for fiscal year 2000;

(iii) \$529,200,000 for fiscal year 2001;

(iv) \$568,200,000 for fiscal year 2002; and

(v) \$607,200,000 for fiscal year 2003.

(c) PLANNING.—

(1) FISCAL YEAR 1998.—There are authorized to be appropriated to carry out sections 5303, 5304, 5305, and 5313(b), \$47,750,000 for fiscal year 1998.

(2) FISCAL YEARS 1999 THROUGH 2003.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5304, 5305, and 5313(b)—

(i) \$42,200,000 for fiscal year 1999;

(ii) \$48,400,000 for fiscal year 2000;

(iii) \$50,200,000 for fiscal year 2001;

(iv) \$53,800,000 for fiscal year 2002; and

(v) \$58,600,000 for fiscal year 2003.

(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5303, 5304, 5305, and 5313(b)—

(i) \$10,800,000 for fiscal year 1999;

- (ii) \$11,600,000 for fiscal year 2000;
- (iii) \$12,800,000 for fiscal year 2001;
- (iv) \$13,200,000 for fiscal year 2002; and
- (v) \$14,400,000 for fiscal year 2003.

(C) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated under this paragraph for a fiscal year—

- (i) 82.72 percent shall be available for metropolitan planning under sections 5303, 5304, and 5305; and
- (ii) 17.28 percent shall be available for State planning under section 5313(b).

(d) RESEARCH.—

(1) FISCAL YEAR 1998.—There are authorized to be appropriated to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322, \$44,250,000 for fiscal year 1998.

(2) FISCAL YEARS 1999 THROUGH 2003.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322—

- (i) \$36,000,000 for fiscal year 1999;
- (ii) \$37,600,000 for fiscal year 2000;
- (iii) \$37,600,000 for fiscal year 2001;
- (iv) \$39,200,000 for fiscal year 2002; and
- (v) \$39,200,000 for fiscal year 2003.

(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322—

- (i) \$9,000,000 for fiscal year 1999;
- (ii) \$9,400,000 for fiscal year 2000;
- (iii) \$9,400,000 for fiscal year 2001;
- (iv) \$9,800,000 for fiscal year 2002; and
- (v) \$9,800,000 for fiscal year 2003.

(C) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated under this paragraph for a fiscal year—

- (i) not less than \$5,250,000 shall be available for providing rural transportation assistance under section 5311(b)(2);
- (ii) not less than \$8,250,000 shall be available for carrying out transit cooperative research programs under section 5313(a);
- (iii) not less than \$4,000,000 shall be available to carry out programs under the National Transit Institute under section 5315, including not more than \$1,000,000 shall be available to carry out section 5315(a)(16); and
- (iv) the remainder shall be available for carrying out national planning and research programs under sections 5311(b)(2), 5312, 5313(a), 5314, and 5322.

(e) UNIVERSITY TRANSPORTATION RESEARCH.—

(1) FISCAL YEAR 1998.—Subject to paragraph (2)(C), there are authorized to be appropriated to carry out section 5505 \$6,000,000 for fiscal year 1998.

(2) FISCAL YEARS 1999 THROUGH 2003.—

(A) FROM THE TRUST FUND.—Subject to subparagraph (C), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5505, \$4,800,000 for each of fiscal years 1999 through 2003.

(B) FROM THE GENERAL FUND.—Subject to subparagraph (C), in addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5505, \$1,200,000 for each of fiscal years 1999 through 2003.

(C) FUNDING OF CENTERS.—

(i) Of the amounts made available under subparagraph (A) and paragraph (1) for each fiscal year—

(I) \$2,000,000 shall be available for the center identified in section 5505(j)(4)(A); and

(II) \$2,000,000 shall be available for the center identified in section 5505(j)(4)(F).

(ii) For each of fiscal years 1998 through 2001, of the amounts made available under this paragraph and paragraph (1)—

(I) \$400,000 shall be available from amounts made available under subparagraph (A) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3); and

(II) \$350,000 shall be available from amounts made available under subparagraph (B) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3).

(iii) Any amounts made available under this paragraph or paragraph (1) for any fiscal year that remain after distribution under clauses (i) and (ii), shall be available for the purposes identified in section 3015(d) of the Federal Transit Act of 1998.

(3) SPECIAL RULE.—Nothing in this subsection shall be construed to limit the transportation research conducted by the centers funded by this section.

(f) ADMINISTRATION.—

(1) FISCAL YEAR 1998.—There are authorized to be appropriated to carry out section 5334, \$45,738,000 for fiscal year 1998.

(2) FISCAL YEARS 1999 THROUGH 2003.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

(i) \$43,200,000 for fiscal year 1999;

(ii) \$48,000,000 for fiscal year 2000;

(iii) \$51,200,000 for fiscal year 2001;

(iv) \$53,600,000 for fiscal year 2002; and

(v) \$58,400,000 for fiscal year 2003.

(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5334—

- (i) \$10,800,000 for fiscal year 1999;
- (ii) \$12,000,000 for fiscal year 2000;
- (iii) \$12,800,000 for fiscal year 2001;
- (iv) \$13,400,000 for fiscal year 2002; and
- (v) \$14,600,000 for fiscal year 2003.

(g) GRANTS AS CONTRACTUAL OBLIGATIONS.—

(1) GRANTS FINANCED FROM THE HIGHWAY TRUST FUND.—

A grant or contract approved by the Secretary, that is financed with amounts made available under subsection (a)(1)(A), (a)(2)(A), (b)(1), (b)(2)(A), (c)(2)(A), (d)(2)(A), (e)(2)(A), or (f)(2)(A) is a contractual obligation of the United States Government to pay the Government's share of the cost of the project.

(2) GRANTS FINANCED FROM GENERAL FUNDS.—A grant or contract, approved by the Secretary, that is financed with amounts made available under subsection (a)(1)(B), (a)(2)(B), (b)(2)(B), (c)(1), (c)(2)(B), (d)(1), (d)(2)(B), (e)(1), (e)(2)(B), (f)(1), (f)(2)(B), or (h) is a contractual obligation of the Government to pay the Government's share of the cost of the project only to the extent that amounts are provided in advance in an appropriations Act.

(h) ADDITIONAL AMOUNTS.—In addition to amounts made available by or appropriated under subsections (a) through (f) under the Transportation Discretionary Spending Guarantee for the Mass Transit Category, there are authorized to be appropriated—

(1) to carry out sections 5303, 5304, 5305, and 5313(b)—

- (A) for fiscal year 1999, \$32,000,000;
- (B) for fiscal year 2000, \$33,000,000;
- (C) for fiscal year 2001, \$34,000,000;
- (D) for fiscal year 2002, \$35,000,000; and
- (E) for fiscal year 2003, \$36,000,000;

(2) to carry out section 5307, \$150,000,000 for each of fiscal years 1999 through 2003;

(3) to carry out section 5308, \$100,000,000 for each of fiscal years 1999 through 2003;

(4) to carry out section 5309(m)(1)(A), \$100,000,000 for each of fiscal years 1999 through 2003;

(5) to carry out section 5309(m)(1)(B)—

- (A) for fiscal year 1999 \$400,000,000;
- (B) for fiscal year 2000 \$410,000,000;
- (C) for fiscal year 2001 \$420,000,000;
- (D) for fiscal year 2002 \$430,000,000; and
- (E) for fiscal year 2003 \$430,000,000;

(6) to carry out section 5309(m)(1)(C), \$100,000,000 for each of fiscal years 1999 through 2003;

(7) to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322—

- (A) for fiscal year 1999, \$31,000,000;
- (B) for fiscal year 2000, \$31,000,000;
- (C) for fiscal year 2001, \$33,000,000;

- (D) for fiscal year 2002, \$33,000,000; and
- (E) for fiscal year 2003, \$34,000,000; and
- (8) to carry out section 5334—
 - (A) for fiscal year 1999, \$13,000,000;
 - (B) for fiscal year 2000, \$14,000,000;
 - (C) for fiscal year 2001, \$16,000,000;
 - (D) for fiscal year 2002, \$17,000,000; and
 - (E) for fiscal year 2003, \$18,000,000.
- (i) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (a) through (e), and paragraphs (1) through (7) of subsection (h), shall remain available until expended.